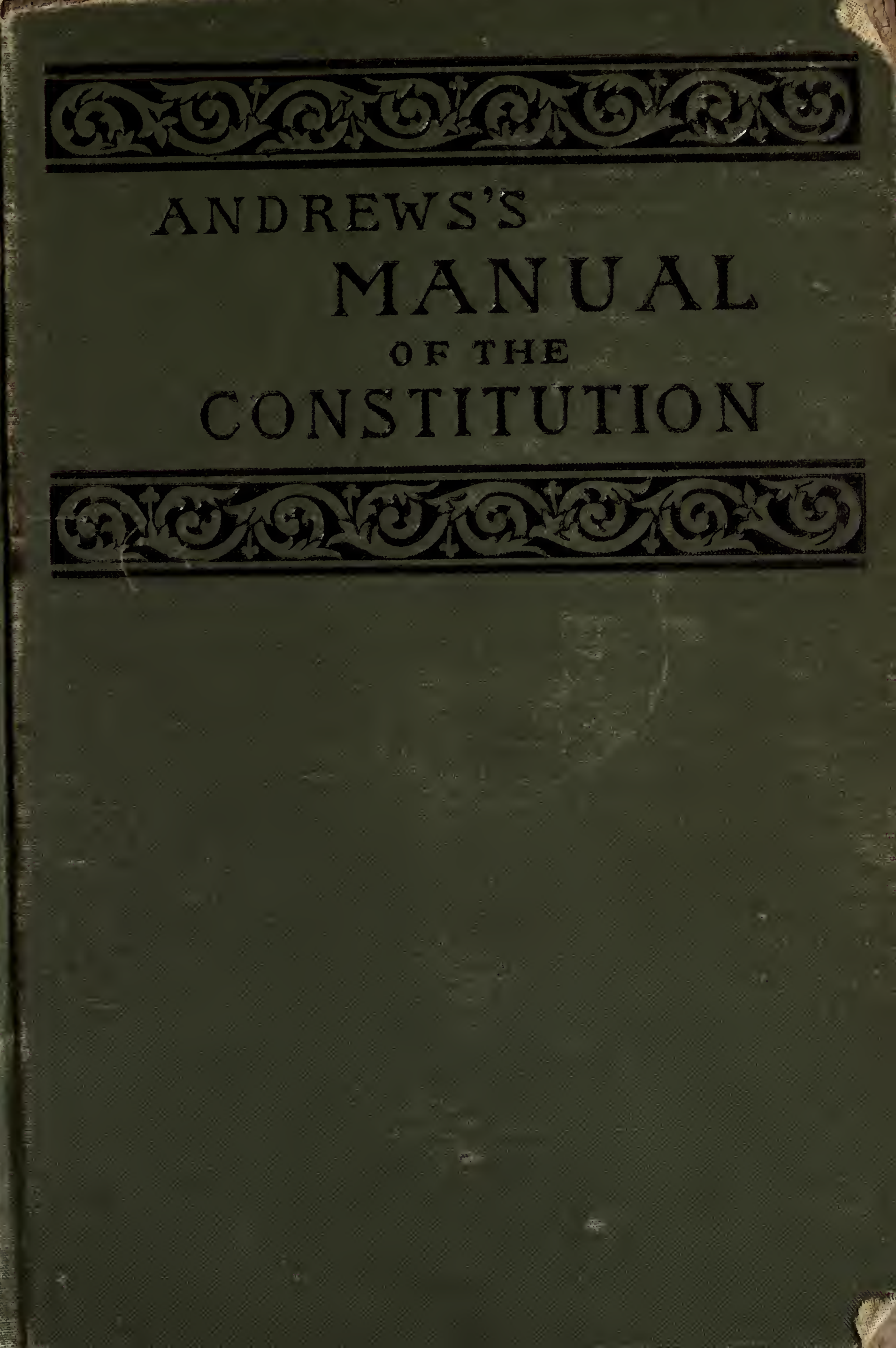

ANDREWS'S MANUAL OF THE CONSTITUTION

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MANUAL
OF THE
CONSTITUTION
OF THE
UNITED STATES,

UNIV. OF
CALIFORNIA

DESIGNED FOR THE INSTRUCTION OF AMERICAN YOUTH IN THE DUTIES,
OBLIGATIONS, AND RIGHTS OF CITIZENSHIP.

BY

ISRAEL WARD ANDREWS, D. D., LL. D.,
President of Marietta College.

VAN ANTWERP, BRAGG & CO.,
137 WALNUT STREET, 28 BOND STREET,
CINCINNATI. *NEW YORK.*

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WITH WHOM,

FOR MORE THAN A THIRD OF A CENTURY,

THE AUTHOR

HAS BEEN MOST PLEASANTLY ASSOCIATED,

THIS VOLUME

IS GRATEFULLY INSCRIBED.

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PREFACE.

This work has grown out of the necessities and experience of the class-room. For the proper instruction of the student in the important subject of civil government, a clear exposition of the great principles of the Constitution is needed, with a summary of the legislative provisions in which they have been embodied. When the author took charge of this department of study, he found himself embarrassed in both these respects, and especially the latter. Questions were continually suggesting themselves, to which answers could be obtained only after laborious research.

Urged on by a deep interest in the subject, and availing himself of the unusual facilities for the prosecution of studies of this character furnished by the library of the College, the author entered upon a somewhat extended investigation of our governmental history. The materials thus accumulated, and accumulating, having for some years furnished the basis for instruction by lectures, have now been condensed into this form, and are given to the public in the hope that other instructors may be in some measure relieved from the excessive labor which similar personal examination would involve.

While the primary object was to provide a suitable text-book, a conviction that a knowledge of our government can not be too widely diffused, and that large numbers would welcome a good work on this subject, has led to the attempt to make the volume a manual adapted for consultation and reference by the citizens at large. With this end in view, the author has sought to embody in the work that kind — and so far as space would allow, that amount — of information on the various topics which an intelligent citizen would desire to possess.

As the value of a work of this kind depends in large measure upon its accuracy, it is proper to say that in nearly every instance the statements touching the legislation or other action of the government have been taken from official publications.

A careful revision of the work has been made, incorporating in it all important changes in the legislation of the country, and giving the practical workings of the Constitution to the present time.

Marietta College,
August, 1878.

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CIVIL GOVERNMENT.

UNIV. OF CALIFORNIA

CHAPTER I.

CIVIL GOVERNMENT—ITS OBJECT, ORIGIN, AND NATURE—DIFFERENT FORMS OF GOVERNMENT—PECULIARITY OF THAT OF THE UNITED STATES—NOT A CONSOLIDATED REPUBLIC, NOR A LEAGUE OF STATES.

A KNOWLEDGE of the nature and operation of the government under which we live is necessary for the successful prosecution of the business of life, and to secure the happiness of ourselves and of those dependent upon us. We can thus adapt ourselves to the circumstances in which we are placed, and avoid those perplexities and difficulties in which one ignorant of the laws and institutions of his country is liable to be involved. The fact that a man is subject to a government is a sufficient reason for studying its character and workings, although he may have no participation in its management.

In a republican government the importance of such knowledge is still greater, because the people not only are amenable to the laws, but also have a voice in electing those who make and execute them. He who lives under a despotism should acquaint himself with its character and workings for his own protection; a citizen of a republic should do the same, because he is to some extent responsible for the government.

Until within the last few years, Americans have been lamentably ignorant of their national government, both as to its history and its operation. The war of the Rebellion, which could hardly have occurred had the whole people understood the true relation of the States to the national government, has had the effect to direct attention to governmental questions. There is probably a stronger desire for such knowledge now than at any previous time, and a corresponding demand for the introduction of such studies into all our schools of higher grade.

Two circumstances facilitate the acquisition of a competent knowledge of our government. First, our national existence extends over a comparatively brief period. About a hundred years only have passed since we became an independent people, while most of the civilized nations of the world have had a long and checkered history. Second, our Constitution is a written instrument, framed with the utmost care, and adopted by the people after the most careful deliberation. No other nation has a constitution that can compare with it, either in its comprehensiveness and completeness of subject, or in the precision of its language.

The object of civil government can not be better expressed than in the words of our Constitution. It is to "establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty." These were the express ends to secure which the people of the United States ordained and established our national Constitution. These are the ends which all governments, of whatever form, are under obligation to seek. Civil governments are not established for the good of the rulers, but for the good of the people. They are not for the good of one or a few, at the expense of the others, but for the good of all.

The general good could not be secured without government. Civil government is thus a necessity. Without it, justice could not be established, or domestic tranquillity insured, or the common defense provided for, or the general welfare promoted, or the blessings of liberty secured. Law is the guardian of liberty. Without law there would be no liberty, but in its stead anarchy. One object of civil government is to protect us in our rights. It does this by restraining those who would interfere with these rights. Civil government is thus rendered necessary by the disposition of some to do wrong to others, and it can not be dispensed with so long as this disposition to interfere with the rights of others continues.

But government is not merely repressive. Its necessity is not wholly owing to the fact that there are wicked men in every community. Law and government are essential for the good as well as for the bad. The "general welfare" is to be promoted, as well as the individual to be protected in his rights. There are many things to be done for the advancement of a nation, which could not be done without that combination and coöperation which are found only in governments. Science and art are to be fostered, education is to be encouraged, civilization to be advanced. Government has thus more to do than to restrain violence, to redress wrongs, and to punish the transgressor. There is government in heaven as well as on earth.

It is sometimes said, that government is a necessary evil; and that that government is best which governs least. The tendency of such language is to excite distrust and aversion, whereas governments should be respected, obeyed, and loved. A government founded in justice and administered with wisdom is always a good. Were government a necessary evil, it would be impossible to account for the existence and strength of patriotism. The love of country, which is stronger than the love of kindred, or any other of the natural affections, is itself a proof that by nature we regard government as a good and not as an evil. There may be abuses, but men look forward to the time when these will be remedied, and the affairs of the country administered with wisdom and justice. That is not the best government which governs least, though, other things being equal, that may be the best which makes the least show of governing. A wise ruler, whether in the family or the state, will never give needless prominence to the fact that he is a ruler, while an unwise ruler is disposed to make a display of his authority. In a good government, if the law is broken punishment must follow; but the better the government, the less will be the tendency to break the law, and therefore the less the necessity of inflicting punishment. In a well-regulated school or family we see no manifestation of government, and apparently no government is needed; but this apparent absence of government is itself a proof of the excellent manner in which the government is administered.

Society is the natural state of man. His whole constitution shows that the intention of his Maker was that he should live in society and under government. History testifies that such has been the case from the beginning. In every age and in every part of the earth, men have lived together in families, tribes, nations. They have been under some authority. Civil society is thus a universal fact. It is not the result of any agreement among men, but is the natural working out of the human constitution. We are born into the nation as into the family. We do not make society, we find it already existing. We are to obey the laws of the land because they are the laws, just as the child is to obey the law of the family. In neither case is any consent asked.

When a "social compact" is spoken of in connection with civil government, it is meant that there are reciprocal duties resting upon the governed and upon those who govern. Whoever enters upon any public office, by the act of doing so agrees to perform faithfully its duties. And whoever becomes a citizen of any nation, by becoming so makes an implied agreement that he will be a good citizen. In this sense there may be said to be, in an existing government, a compact between the governed and those who govern, and a compact between each citizen and all the others.

But it is not correct to say that civil society derives its authority through any such compact, for then the power possessed by society would be limited to that received from the individual men composing the society. But the powers of government include those which never belonged to the individual man, and therefore could never have been conferred by him upon society. Indeed, if there ever was a state of nature, as some have supposed, prior to the existence of civil society, when men lived without government, all possessing equal rights, there could manifestly have been no right to govern, since no one could have had authority over another who was his equal. Men can not give what they do not possess, and society could never obtain its right to govern from the individual citizens, since they never had such a right.

Suppose, however, that this idea of a state of nature antecedent to civil society were fact and not fiction, and that men lived without government, all possessing equal rights; what is to be done with those who do not choose to give up their rights? Plainly, the majority could have no authority to coerce a minority, and government would be an impossibility. Nor could one generation bind the one succeeding it; and each new-born citizen would be rightfully independent of all governmental control until his individual rights should be voluntarily deposited in the common stock.

The authority of civil society is not, then, derived from the individual citizens composing that society. They surrender nothing; society receives nothing. The fallacy in the theory of the "social compact," considered as an explanation of the origin of civil government, consists in confounding men as *individuals* with men as constituting a *community*.

Wherever an independent community of men can be found there is already civil society. There is no necessity for men to surrender a part of their rights in order to form a basis for authority; the authority exists without any such surrender. In society, man has all the rights which he could have in any state of nature; if any such state of nature out of society can be conceived of. As has been already said, society is the natural state of man. Hence it is of divine origin. It is the intention of our Creator that we should live in society and under government, as it is that the race should be grouped into families, and the child be subject to his parents. "The powers that be are ordained of God." "There is no power but of God." No individual man has any divine right to be a king; but civil government is of divine origin. Whoever exercises legitimately any function of the civil ruler, whether he be king or president, legislator or judge, is exercising an authority which is as divine in its origin as is the authority of a parent over his child.

Civil authority is of divine origin, and it is lodged in the people. It is held by the nation as a whole, and not by them as individuals. Society is not a congress of sovereigns. The power of society does not come from the individual members, but it belongs to the nation as such. The nation receives it from God, as a parent receives from God his right to govern his children. If we suppose that civil society possesses no authority except what has been imparted to it by the individual members, it follows, as we have already seen, that government can not be extended over those who have not surrendered their share of sovereignty. In such a case, majorities would have no right to control minorities. The supposition that civil government rests upon individual sovereignty, would thus virtually destroy all governmental authority.

It may be thought that the theory that the authority is in the *community*—the people as a whole—would lead to the other extreme of a social despotism. As, in the other case, the rights claimed for the individual would make government an impossibility, so, here, the rights claimed for the people as a whole would destroy all the rights of the individual citizen. But, although the sovereignty is in the people collectively, they have no right to exercise any authority which God has not bestowed upon them. The parent has no right to govern his child except for the child's good; neither has the nation any right to do any thing which is not for the good of the people. Each member of the community has inalienable rights, with which society has no right to interfere. It is not claimed that all rights come from the state; many do, but some do not. They belong to man as man. Humanly speaking, the sovereignty is in the nation—the people collectively. But this sovereignty is not absolute; it must be exercised in subordination to a higher sovereignty which recognizes the dignity and worth of the human being.

A political community, independent of all others, framing its own constitution, and enacting its own laws without hinderance or question from any other community—in short, a body politic, with no political superior, is a sovereign state or nation.[1] France and England are sovereign nations; so is the United States. The sovereignty is in the *state*, as distinct from the *government* of the state. The people collectively constitute the state; the body of men who for the time being are invested by the state with civil authority, constitute the government. The political society exists as a historical fact; thus existing, it frames for itself a constitution and adopts a government. The nation must exist as a separate political community before it can give itself a constitution. The constitution does not constitute the nation, but only the government of the nation. A constitution is an organic law, and presupposes a body politic possessing the authority to enact such a law. The constitution thus made by a nation already existing, prescribes the mode in which the nation determines that its governmental affairs shall be managed. It is a kind of letter of instructions to those who are to act as its ministers in carrying on the government. It is the organic law to which all other laws must be conformed. The constitution is made by the nation for the guidance of the government. The government can not change it, but the nation can.

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[1] The word *state* is used by writers on government to signify a separate political community; it is synonymous with nation. In the United States it is also applied to a member of the American Union. In this volume, when used in the former sense, it will be written *state;* when in the latter, *State.*

This distinction between the state, or nation, on the one hand, and the government on the other, is of great importance. The sovereignty is in the nation. As sovereign, the nation may constitute the government according to its own judgment, and give it such form as it pleases. But the sovereignty is in the nation as such, and not in the individual men composing it. The will of the nation is expressed in the constitution, which is the supreme law until the nation chooses to alter it; and this alteration must be made in the mode which the nation has itself prescribed in the same organic law. A large majority of the people may disapprove of a clause in the constitution, but their disapprobation passes for nothing until the obnoxious clause is constitutionally removed from the constitution. The same is true of the laws of a country. They are supposed to be valid until repealed. The constitution is made by the people, and the laws by the government; but both are in force until changed or repealed by the power that enacted them. The people as a whole do not make the laws, the government does not make the constitution.

Some writers distinguish between the constitution of the nation and that of the government. Jameson calls the first a constitution *considered as an objective fact.* It is the "make-up of the commonwealth as a political organism; that special adjustment of instrumentalities, powers, and functions, by which its form and operation are determined." The second is a constitution *considered as an instrument of evidence.*[1] Brownson says, "The constitution is two-fold; the constitution of the state or nation, and the constitution of the government. The constitution of the government is, or is held to be, the work of the nation itself; the constitution of the state, or of the people of the state, is, in its origin at least, providential, given by God himself, operating through historical events or natural causes. The one originates in law, the other in historical fact."[2]

The constitution of the nation is unwritten. The constitution of the government may be written or unwritten. The constitution of the nation is its character—what it *is*, at any epoch. The constitution of the government is what the nation chooses to make it. As the nation changes, its constitution changes accordingly; and the nation should change its governmental constitution from time to time, to make it correspond with the real constitution. The American nation was in existence a number of years before it formed a written governmental constitution. The present constitution, which went into operation in 1789, has received slight modifications at different times, and will continue to be modified in future years, as the character of the nation itself is changed. We shall see, when the mode of amending the Constitution comes to be considered, that ample provision has been made against hasty changes in that instrument. Indeed, there is more reason to apprehend that needed changes will be delayed too long, than that those which are unnecessary will be introduced.

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[1] Jameson's Constitutional Convention, p. 66.

[2] Brownson's American Republic, p. 138.

There are various forms of government, differing from each other more or less widely. In a *Monarchy*, the ruler is a single person. An *Aristocracy* is a form of government in which the authority is held by a few. In a *Democracy*, the power is exercised by the people themselves. But most existing governments combine two or more of these forms.

In a monarchy, the whole authority is not necessarily in a single person. Most of the governments of Europe are called monarchies; but in some of them the king has less power than the President of the United States. An absolute monarchy is a despotism. The monarch governs according to his own will and caprice, and not according to established laws. Such a government is clearly illegitimate. It is a government of force. In a limited monarchy, the king, prince, or emperor, or whatever he may be called, though nominally the sovereign, wields a power more or less restricted. Great Britain, and all the provinces subject to it, are called Her Majesty's Dominions. The government is carried on in the sovereign's name. The army and navy are called Her Majesty's troops and ships. But at the same time her real power is small. The laws are enacted by Parliament, and they are administered by the ministers, who are called Her Majesty's government. Parliament is composed of two houses: the House of Lords, which is hereditary, and the House of Commons, which is elective.

A *Republic* is properly a commonwealth. The domain belongs to the nation rather than to the king or the nobles. It is a government in which the authority is exercised by the representatives of the people. It differs from a *Democracy* in this, that in the latter the power is exercised by the people themselves, while in the former the people elect representatives to act for them. A pure democracy can exist only in a small territory, where all the people can meet and enact laws. A republic may be democratic or aristocratic. If suffrage is universal, if the rulers are elected by the whole people, the government is a democratic republic. In proportion as suffrage is restricted, and the number of voters diminished, the government becomes less democratic and more aristocratic.

Most existing governments are, to some extent, republican, although at the same time monarchical. Louis Napoleon, late emperor of the French, held his office by election. The people of France made him emperor by their votes. The monarchs of England rule by hereditary right: the members of the House of Lords hold their seats by virtue of their birth, but the members of the House of Commons are elected. The government is thus at the same time monarchical, aristocratic, and republican; but in its republican part, it is more aristocratic than democratic, as a large part of the people are deprived of the right of suffrage. Macaulay calls the Roman emperors republican magistrates named by the senate.

Our own government is peculiar. John Quincy Adams speaks of it as "a complicated machine. It is an anomaly in the history of the world. It is that which distinguishes us from all other nations, ancient and modern." Dr. Brownson says, "The American Constitution has no prototype in any prior constitution. The American form of government can be classed throughout with none of the forms of government described by Aristotle, or even by later authorities. Aristotle knew only four forms of government: Monarchy, Aristocracy, Democracy, and Mixed Governments. The American form is none of these, nor any combination of them. It is original, a new contribution to political science, and seeks to attain the end of all wise and just government by means unknown or forbidden to the ancients, and which have been but imperfectly comprehended even by American political writers themselves."[1]

Our government is not a simple, or consolidated republic, on the one hand, nor, on the other, is it a league of States. Many seem to suppose that there is no middle ground between these two; that the denial of the one is equivalent to the affirmation of the other. The American people constitute a nation, with a republican government. The nation has a Constitution in which the character of the government is clearly delineated. This Constitution is the supreme law of the land. But the country is divided into divisions, called States, each of which has a constitution. The people of the whole nation have made the general Constitution, while the people of each State have made a constitution for that political division. The national Constitution is operative throughout the whole domain; it is binding on all the people. The constitution of a State is confined in its operation to the State limits; beyond them it has no force. But within the State, it is the organic law, whose provisions, unless conflicting with the national Constitution or the laws enacted under it, must be carried out. Were the government a league of States, there could be no supreme national government; were the nation a consolidated republic, there could be no State constitutions. Unquestionably, the American people are a single people, a nation, in the same sense, and just as truly, as the people of France. But at the same time the national Constitution every-where recognizes the existence of the States, with their separate constitutions, and their various departments.

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[1] Brownson's American Republic, p. 5.

Were our government a simple republic, we should have no laws except those enacted at Washington. In that case, a county would bear to a State the same relation that a State does to the nation, as is sometimes affirmed to be the case now. But the statement is incorrect. A county can do nothing politically which it is not authorized by the State to do. A State can do any thing politically which does not contravene a law or the Constitution of the nation. The people of a county, as such, have no constitution, and have no power to form one. The people of a State have a constitution, and may alter it at pleasure, provided its provisions are in harmony with the national laws and Constitution. The county originates nothing; all its power comes to it from a political body above it. The State originates every thing; its power coming directly from the people themselves.

But although the States have constitutions, and derive their governmental authority from the people, this does not make them sovereign states, or the general government a mere confederacy. The American people are one people, yet their government is not a consolidated one. They exist in States, yet their government is not a confederated one. From the day when the Declaration of American Independence was made, they have existed as a nation, yet grouped into States. The nation and the thirteen original States began their existence together. Neither preceded, neither followed. The American people "have not, as an independent sovereign people, either established their union, or distributed themselves into distinct and mutually independent States. The union and the distribution, the unity and the distinction, are both original in their Constitution, and they were born United States, as much and as truly so as the son of a citizen is born a citizen, or as every one born at all is born a member of society, the family, the tribe, or the nation. The Union and the States were born together, are inseparable in their Constitution, have lived and grown together; and no serious attempt till the late secession movement has been made to separate them."[1]

"Say the people of the United States are one people in all respects, and under a government which is neither a consolidated nor a confederated government, nor yet a mixture of the two, but one in which the powers of government are divided between a general government and particular governments, each emanating from the same source, and you will have the simple fact."[2] "Strictly speaking, the government is one, and its powers only are divided and exercised by two sets of agents or ministries."[3] To the same purpose Jameson: "And here I may remark that the Constitution of the United States is a part of the constitution of each State, whether referred to in it or not, and that the constitutions of all the States form a part of the Constitution of the United States. An aggregation of all these constitutional instruments would be precisely the same in principle as a single constitution, which, framed by the people of the Union, should define the powers of the general government, and then by specific provisions erect the separate government of the States, with all their existing attributions and limitations of power."[4]

No other nation has such a distribution of the powers of government. Foreigners almost universally fail to comprehend it, and many of our own people find it a perplexing subject. The general government and the particular governments together constitute the government of the United States. The former is general, as its care extends to the whole Union; the governments of the States are particular, as limited to the local interests of the individual States. The two in combination form the one supreme national government, or government of the United States. It is one government, exercising its powers in two different spheres. The authority comes from the same people, the people of the United States, in whom is the whole sovereignty. As stated above by Judge Jameson, the general Constitution and the constitutions of the States might be considered as one great instrument. There are, first, those articles which are concerned with the interests of the whole, and then, in succession, those which relate to the particular and local interests of the several States. Or we may say that the people of each State have two constitutions; one local and particular, the other general. The latter has been adopted by them in conjunction with the people of the rest of the nation; the former they have adopted by themselves, yet taking care that none of its provisions are in conflict with those of the general Constitution. The local constitution is no more the constitution of a particular State than the general Constitution is. The people of New York by their ratification of the general Constitution, and the people of Ohio by their adoption of it at their entrance into the Union, have made it their own as truly as those constitutions for the adoption of which they alone voted. Every provision of the Constitution of the United States is to be regarded as expressing the will of the people of Ohio as much as any provision of the constitution of that State. There is, thus, no legitimate place for conflict between the general government and the governments of the States, because they have all been formed by the same authority—the people of the nation. It was never intended that these should be arrayed against each other like political parties, or serve as "checks and balances," after the example of some other governments.

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[1] Am. Rep., p. 222. [2] Id., p. 231. [3] Id., p. 250. [4] Const. Con., p. 87.

CHAPTER II.

THE COLONIAL GOVERNMENTS—ROYAL, PROPRIETARY, AND CHARTER—THE CAUSES OF THE REVOLUTION—THE CONTINENTAL CONGRESS—THE DECLARATION OF INDEPENDENCE.

THE Colonies, which declared their independence of Great Britain in 1776, and formed a new nation, known from that time as The United States of America, were thirteen in number, viz., Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. These had been settled at various times, from 1607, when the settlement of Virginia was commenced at Jamestown, to 1732, when the Colony of Georgia was established. They were not all settled as so many distinct colonies, but various changes had taken place among them. Thus, the Colony of Massachusetts, as it existed at the beginning of the War of the American Revolution, embraced what constituted originally three distinct colonies; that of Massachusetts, that of New Plymouth, and the Province of Maine. The Colony of New Haven had been merged in that of Connecticut. The Carolinas, on the other hand, had been divided; and what was at first a single colony, under the name of Carolina, was made two in 1732, and the divisions were called by the present names of North Carolina and South Carolina.

All the lands were held by titles coming from the British crown, which claimed the country by the right of discovery. Near the close of the fifteenth century, King Henry the Seventh had sent out John Cabot on a voyage of exploration, who discovered the Islands of

Newfoundland and St. John, and sailed along the coast from the fifty-sixth to the thirty-eighth degree of north latitude. All this territory, in consequence, was claimed to belong to Great Britain, and by that power grants were made from time to time to companies and to individual proprietors. Under the charters and patents thus granted, settlements were made and local governments established. The colonies all acknowledged allegiance to the mother country while they had no political connection with one another.

The colonial governments have been described by most writers, following the division given by Blackstone, as of three kinds; Provincial, Proprietary, and Charter. The Provincial governments, which were often called Royal, had a governor and council appointed by the Crown, and a legislature whose upper house was the council and whose lower was elected by the people. The governor had a negative upon all the proceedings of the legislature, and could also prorogue or dissolve them at pleasure. Laws might be enacted not repugnant to the laws of England, and subject to the ratification of the Crown. The governor, with the advice and consent of the council, could establish courts and appoint judges and other officers.

In the Proprietary governments, the proprietors appointed the governors, and it was under their authority that legislative assemblies were convened. While the proprietors thus exercised those prerogatives which in the Royal governments were exercised by the Crown, the sovereignty of the mother country was, nevertheless, to be strictly maintained.

In the Charter governments the people had much more political power. Their relation to England was more like that of the citizens of one of our States to the nation, while that of the people in the Royal governments was more like that of the people in one of our Territories. The charter granted to Massachusetts by

Charles the First gave power to elect annually a governor, deputy-governor, and eighteen assistants. Four "great and general courts" were to be held every year, to consist of the governor or deputy-governor, the assistants, and the freemen. These courts were authorized to appoint such officers as they should think proper, and also to make such laws and ordinances as to them should seem meet; provided they were not contrary to the laws of England.[1]

Connecticut and Rhode Island formed governments for themselves; the provisions of which were afterwards secured to them in charters granted by Charles the Second, soon after his restoration to the throne. The people of these colonies, by the express words of their charters, were entitled to the privileges of natural-born subjects, and invested with all the powers of government, legislative, executive, and judicial. The only limitation to their legislative power was that their laws should not be contrary to those of England.[2]

"The king and parliament claimed the right to alter and revoke these charters at pleasure; but the colonists, on the other hand, denied this right, and claimed them to be solemn compacts between them and the Crown, irrevocable unless forfeited by some act of the grantees. This was a continual source of contention between the parent country and the charter colonies, and was one of the causes which finally produced a separation between the two countries."[3]

The people of these two colonies were indeed so well satisfied with their charters, granted in 1662 and 1663, that they continued to live under them long after they had ceased to be colonies, and had become States of the American Union. Connecticut did not form a State constitution till 1818, nor Rhode Island till 1842.

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[1] Pitkin's Pol. and Civ. Hist. U. S., I, p. 36.

[2] Pitkin, I, p. 54. [3] Ibid, p. 55.

The colonies which had charter governments were, as we have seen, Massachusetts, Rhode Island, and Connecticut.

The Royal, or Provincial, governments were those of New Hampshire, New York, Virginia, and Georgia; to which were added New Jersey in 1702, and the Carolinas in 1729, all which had previously been under Proprietary governments.

The colonies that continued under Proprietary governments till the Revolution were Pennsylvania, Maryland, and Delaware.

It has been seen that each of the colonies exercised some of the powers of government, while none claimed to be independent of England. In the Plymouth Colony, for the first twenty years, all the freemen met in "general court" and participated in making laws. In 1639, a house of representatives was substituted for the whole body of freemen. In Virginia, a general assembly, composed of representatives from the various plantations, was called in 1619. This was the first representative legislature that ever sat in America. Eventually, all the colonies elected one or both of the branches of their provincial legislatures.

The first union among any of the colonies was formed in 1643. It embraced Massachusetts, Plymouth, Connecticut, and New Haven, under the name of "The United Colonies of New England." Their object was to defend themselves against the Indians, and also to resist the claims and encroachments of the Dutch.[1]

In June, 1754, commissioners from seven of the colonies, viz., Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Pennsylvania, and Maryland, met in Albany at the request of the lords commissioners for trade. The object was to form a treaty with some of the Indian tribes, and to consider the best means of defending America against France. With reference to this end the British Secretary of State had suggested that a plan of union among the colonies should be formed. At this meeting, after the adoption of a resolution that a union of the colonies was absolutely necessary for their preservation, a committee was appointed, consisting of one member from each colony, to report a plan of union. One proposed by Dr. Franklin, who was a member of the committee, was finally adopted by the Convention.

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[1] Pitkin, I, p. 50.

It provided for a general government of all the American Colonies, to consist of a president-general to be appointed by the Crown, and a grand council of delegates to be chosen every three years by the colonial assemblies. The president and council were to regulate all affairs with the Indians, to make new settlements on lands purchased of the Indians, and govern such settlements, to raise soldiers, build forts, and equip vessels for guarding the coast and protecting the trade. For these purposes, they were to make laws and levy such duties and taxes as they might deem just. The president was to have a negative on all laws and acts of the council, and to see that the laws were executed.

This plan was adopted by the Convention; all the delegates voting for it except those from Connecticut. But it never went into operation, having failed to obtain the approval either of the colonies or the mother country. "It had the singular fate of being rejected in England, because it left too much power in the hands of the colonists; and it was disapproved in America, because it transferred too much power into the hands of the Crown."[1]

In 1765, a Congress of delegates was held at New York. This was in consequence of the passage of the Stamp Act by the British Parliament in March of the same year. That body had determined to raise a revenue from the colonies by taxation, although the colonists most vehemently protested against it. The passage of the Stamp Act, which required all legal documents to be on stamped paper furnished by the British government, excited universal alarm in the colonies. The Colonial Assembly of Virginia, at a session held soon after the news reached America, adopted resolutions of the most decided character. These resolutions were moved and supported by the celebrated Patrick Henry. When, in the heat of debate, he exclaimed, "Cæsar had his Brutus, Charles I. his Cromwell, and George III."—he was interrupted by the Speaker and others with the cry of "treason." Pausing a moment and fixing his eye on the Speaker, he added—"may profit by their example; if this be treason, make the most of it."

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[1] Pitkin, I, p. 145.

Meanwhile Massachusetts had voted that it was desirable that a Congress of delegates from all the colonies should be held. Accordingly, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina elected commissioners who met at New York, as stated above. New Hampshire approved of the Congress, but from the peculiar situation of the colony it was judged not prudent to send delegates. Virginia, North Carolina, and Georgia were not represented, because the governors of those colonies refused to call special assemblies for the appointment of delegates.

"This was the first general meeting of the colonies for the purpose of considering their rights and privileges, and obtaining a redress for the violation of them on the part of the parent country."[1] They adopted a declaration of rights and grievances, which asserted the claim of the colonists to all the inherent rights and liberties of subjects within the kingdom of Great Britain; "that it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them but with their own consent, given personally or by their representatives."[1]

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[1] Pitkin, I, p. 180.

The Stamp Act was subsequently repealed, but other taxes and duties were imposed quite as obnoxious to the colonies. Their efforts to obtain redress being unsuccessful, it became obvious that they must form a closer union for their own protection. In 1774, Massachusetts recommended the assembling of a Continental Congress, to deliberate upon the state of public affairs.

On the fifth of September, a Congress of delegates from twelve colonies assembled at Philadelphia. Of these, some were appointed by the popular branch of the Colonial Assembly, while others were elected by conventions of the people. Georgia, the youngest of the colonies, was not represented. This is known as "The First Continental Congress." "The Congress thus assembled," says Judge Story, "exercised *de facto* and *de jure* a sovereign authority; not as the delegated agents of the governments *de facto* of the colonies, but in virtue of original powers derived from the people."

Among the distinguished members of this Congress, were John Adams and Samuel Adams of Massachusetts, Roger Sherman of Connecticut, John Jay of New York, Peyton Randolph, Richard H. Lee, Patrick Henry, and George Washington of Virginia. Peyton Randolph was chosen president. The first resolution adopted was, "That in determining questions in this Congress each colony or province shall have one vote; the Congress not being possessed of, or at present able to procure, proper materials for ascertaining the importance of each colony."[2] This rule of equal suffrage established because the Congress did not possess the information requisite for establishing a more equitable one, remained in force until the adoption of the present Constitution, in 1789.

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[1] Story. [2] Jour. of Cont. Congress, I, p. 11.

The addresses to the King, to the people of Great Britain, to the inhabitants of the colonies they represented, and to the inhabitants of the Province of Quebec, were all drawn up with great ability, and were spoken of by Lord Chatham in terms of the highest admiration. After recommending that another Congress should be held on the tenth of May following, provided that a redress of grievances was not previously obtained, this Congress adjourned on the twenty-sixth of October. That the measures adopted, if supported by the American people, would produce a redress of grievances, was the conviction of a majority of the members of the Congress.[1]

But in this they were disappointed. The breach between England and the colonies became wider. Delegates were, therefore, appointed to meet in Philadelphia, May 10th, 1775, agreeably to the recommendation of the Congress of 1774. Some of these were chosen by conventions of the people, and some by the colonial legislatures, as in the previous Congress. With scarcely an exception, the delegates of 1774 were reappointed in 1775. As before, twelve colonies were represented. A delegate also was present from a single parish in Georgia, and in July a convention was held in that colony, which voted to accede to the general association, and appointed delegates to the Congress.

This Second Continental Congress continued its sessions, with occasional adjournments, till the adoption of the present Constitution, in 1789. Before they assembled on the tenth of May, hostilities had been commenced by the British troops under General Gage. One of the first items of business brought before the body was a letter from the provincial congress of Massachusetts, giving an account of the battles of

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[1] Pitkin, I, p. 301.

Lexington and Concord, with the action of that colony in relation thereto, and requesting the direction and assistance of the Congress. In this letter is the following suggestion: "With the greatest deference, we beg leave to suggest, that a powerful army on the side of America hath been considered by this Congress as the only means left to stem the rapid progress of a tyrannical ministry."[1] The Congress at once resolved itself into a committee of the whole, to take into consideration the state of America, and referred this letter from Massachusetts to that committee.

Hostilities having already commenced, the necessities of the case compelled this Continental Congress to take measures to put the country into a state of defense, and soon they assumed a virtual control over the military operations of all the colonies. An army was organized, and on the fifteenth of June, George Washington, a delegate from Virginia, was unanimously elected general of all the forces. His commission styled him the General and Commander-in-Chief of the Army of the United Colonies. This was the first occasion on which the style, "The United Colonies," was adopted; it continued to be used till the Declaration of Independence substituted the name, "The United States."

The action of Congress in providing for raising an army and appointing a commander-in-chief was in accordance with the general expectation of the colonies. Congress thus assumed the defense of the country. They created a continental currency by issuing bills of credit. They established a treasury department, and organized a general post-office, Dr. Benjamin Franklin being the Postmaster-General. In answer to the applications from various colonies for advice as to their local governments, Congress recommended that such forms of government be established as would best secure good order during the continuance of the dispute between Great Britain and the colonies. This advice manifestly contemplated the establishment of provisional governments only. This was in November and December, 1775.

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[1] Jour. Con., I, p. 77.

But the question of separation began to be discussed. On the twenty-second of April, the convention of North Carolina empowered their delegates in Congress "to concur with those in the other colonies in declaring independency. This, it is believed, was the first direct public act of any colonial assembly or convention in favor of the measure."[1] On May 15th, the convention of Virginia went further, and unanimously *instructed* their delegates in Congress "to propose to that respectable body to declare the United Colonies free and independent States, absolved from all allegiance or dependence upon the crown or parliament of Great Britain." In accordance with these instructions, Richard Henry Lee, one of the delegates from Virginia, submitted a resolution declaring "that the United Colonies are and ought to be free and independent States; that they are absolved from all allegiance to the British crown; and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." This was on the seventh of June. On the next day it was debated in committee of the whole.

"No question of greater magnitude," says Mr. Pitkin, "was ever presented to the deliberation of a deliberative body, or debated with more energy, eloquence, and ability."[2]

The resolution was discussed again in committee of the whole on the tenth, and adopted. The committee recommended that the farther consideration of the resolution be postponed till the first of July, but meanwhile that a committee be appointed to draft a declaration of independence. This committee consisted of Thomas Jefferson of Virginia, John Adams of Massachusetts, Benjamin Franklin of Pennsylvania, Roger Sherman of Connecticut, and R. R. Livingston of New York.

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[1] Pitkin, I, p. 360. [2] Hist., I p. 362.

The postponement was immediately followed by proceedings in the colonies, most of which either instructed or authorized their delegates in Congress to vote for the resolution of independence; and on the second day of July that resolution, which had before been agreed to in committee of the whole, was adopted by Congress itself. The committee who had been instructed to prepare the declaration, had reported on the twenty-eighth of June, and on the fourth day of July that paper was adopted.

After citing reasons for the dissolution of the political bands which had connected them with Great Britain, the Declaration concludes: "We, therefore, the Representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right, ought to be, FREE and INDEPENDENT STATES."

This was the beginning of the nation. Whether it could maintain its independence, thus boldly declared, was to be decided by the sword. Should the people fail in the bloody struggle, they would never be known as a nation upon the page of history. Should they succeed, their national existence would date from the fourth of July, 1776.

This Declaration of Independence was not the work of States, for no States existed. It was the *people* of the thirteen United Colonies who had through their representatives declared themselves absolved from their allegiance to Great Britain. The nation and the States were born on the same day. Hitherto, there had been colonies and the mother country, to which all the colonists acknowledged allegiance. Now, the sovereignty was no longer in Great Britain, but in the people themselves, who claimed to be a separate political community; and the individual colonies had become States. From that day the nation itself, through Congress, exercised all the functions of government. There was a real government, though as yet no written constitution; and the relations of the States to the general government were in substance the same as they are now.

CHAPTER III.

THE ARTICLES OF CONFEDERATION—THEIR FAILURE—THE CONVENTION TO FORM A CONSTITUTION.

Soon after the Declaration of Independence was made, a committee, previously appointed, reported a draft of the Articles of Confederation. These were debated from time to time, and, after several modifications, were finally agreed to by Congress, November 15, 1777. They were to become binding when ratified by all the States. Ten States ratified them in July, 1778; New Jersey, November 26, and Delaware, February 22, 1779. Maryland withheld her approval till March 1st, 1781.

This was nearly five years after the Declaration of Independence. During this time, the war had been carried on and all the affairs of the nation had been conducted, by Congress. A treaty had been made between France and the United States, which was concluded at Paris, February 6th, 1778, and ratified by Congress May 4th of that year. The surrender of Cornwallis, which virtually closed the war, took place on the 17th of October, 1781, about six months after the adoption of the Articles of Confederation. The successful prosecution of the War of the Revolution could not, then, have been owing to the influence or efficacy of these Articles. On the contrary, there is good reason to believe that, had these Articles been adopted in 1776, the final result would have been very different from what it was.

These Articles were as erroneous in theory as they were inefficient in practice. The Declaration of Independence was made in the name of the *people* of the

United States. The first sentence alludes to them as "one people" that had found it necessary to dissolve the political bands which had connected them with another people, and to assume among the powers of the earth the separate and equal station to which they were entitled. The Constitution speaks the same language: "We, the People of the United States, do ordain and establish this Constitution for the United States of America."

But the Articles of Confederation do not purport to come from the people. They were the work of the States. The instrument is styled "Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay," etc. It was drawn up and adopted by Congress, and sent to the States for ratification. Being thus the work of the States, and not of the people, we are not surprised at the declaration in it, that "each State retains its sovereignty, freedom, independence," etc.

The Articles contained much that was good, and some things not good; and much was omitted which was essential to a Constitution. It provided for one House of Congress, to be composed of delegates appointed annually by the several States, as each should direct, no State to be represented by more than seven or less than two, and no person being capable of serving as a delegate more than three years in six. Each State was to pay its own delegates, and could recall them at pleasure. The voting was to be by States.

Congress was invested with power as to war and peace, treaties and alliances. Congress could decide, on appeal, disputes between States, could regulate the alloy and value of money, had charge of all postal matters, etc., etc.; but no important action could be taken without a vote of nine States—two-thirds of the whole.

No Executive Department was provided, and no

Judiciary. Taxes were to be apportioned among the States, but Congress had no authority to levy them. Commerce was in the control of the States. Each State could lay duties and imposts. Congress had no power to enforce its own measures.

"In the very modes of its operation there was a monstrous defect, which distorted the whole system from the true proportions and character of a government. It gave to the Confederation the power of contracting debts, and at the same time withheld the power of paying them. It created a corporate body, formed by the Union and known as the United States, and gave to it the faculty of borrowing money and incurring other obligations. It provided the mode in which its treasury should be supplied for the reimbursement of the public credit. But over the sources of that supply, it gave the government contracting the debt no power whatever. Thirteen independent legislatures granted or withheld the means which were to enable the General Government to pay the debts which the general Constitution had enabled it to contract, according to their own convenience or their own views and feelings as to the purposes for which those debts had been incurred."[1]

As each State paid its own delegates in Congress, the smaller the number, the less the expense. Oftentimes a State would have no representative. The Treaty of Peace, signed September 3d, 1783, could not be ratified till January 14th, for want of representatives, and then there were but twenty-three members present. In April of that year there were present twenty-five members from eleven States, nine being represented by two each. Three members, therefore—one-eighth of the whole—could negative any important measure.

The Treaty of Peace was made by the United States with Great Britain, but Congress could not enforce its provisions. Various articles were constantly violated by the States, and Congress could not prevent it. Great Britain declared her readiness to carry the treaty into effect when the United States would do the same.

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[1] Curtis's History of the Constitution, I, p. 181.

As the General Government could not carry out its own treaties with foreign powers because of the refusal of the States, so it could not protect a State against insurrection or rebellion. The outbreak in Massachusetts in 1786, known as Shays's Insurrection, which embraced a fifth of the inhabitants in several of the most populous counties, caused great alarm through the country. Armed men surrounded the court-houses, and finally the insurgents were embodied in arms against the Government. The National Government was powerless to aid the State; the Articles of Confederation gave Congress no authority in such a case.

The weakness of the league of States was made abundantly manifest. It is not surprising that Washington should write as he did to a member of Congress, "You talk, my good sir, of employing influence to appease the present tumults in Massachusetts. * * * *Influence* is not *government.* Let us have a government by which our lives, liberties, and properties will be secured, or let us know the worst at once."[1]

The weakness of the Confederation, especially in its relation to the revenue, had been early seen by Washington. He saw "that to form a new constitution, which would give consistency, stability, and dignity to the Union, was the great problem of the time."[2] So, too, Mr. Hamilton, without doubt the ablest statesman of his age, was convinced before the Articles of Confederation went into operation that they could never answer the purposes of government. As early as 1780, he sketched the outlines of a system of government for the United States, embodying almost every feature of our present Constitution.[1]

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[1] Curtis, I, p. 274. [2] Ibid, p. 202.

In May, 1785, Governor Bowdoin of Massachusetts suggested the appointment of special delegates from the States to define the powers with which Congress ought to be invested. A resolution was accordingly passed by the legislature of Massachusetts, declaring the Articles of Confederation inadequate, and calling a convention of delegates from all the States. But the matter was not brought before Congress by the members of that body from Massachusetts.

In January, 1786, the legislature of Virginia appointed commissioners to meet with those from other States to consider the subject of trade, with reference to a uniform system of commercial regulations. The meeting was held in September, at Annapolis, Maryland. Only five States were represented; viz., New York, New Jersey, Pennsylvania, Delaware, and Virginia; but great results followed from the Convention. The committee representing so few States did not enter upon the proper business of the Convention, but prepared a report, drawn up by Mr. Hamilton, expressing their unanimous conviction that a general convention should be called to devise such provisions as might render "the Constitution of the Federal Government adequate to the exigencies of the Union."

This report, though addressed to the States represented, was also sent to Congress as well as to the other States. That body, on the twenty-first of February, 1787, adopted the following resolution:

"*Resolved*, That, in the opinion of Congress, it is expedient that, on the second Monday in May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures, such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union."

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[1] Curtis, I, p. 204.

In accordance with this recommendation, all the States but Rhode Island appointed delegates, and the Convention assembled at Philadelphia, Monday, May 14th, 1787. The organization was not, however, effected, for want of a quorum, till the twenty-fifth, when George Washington was unanimously elected President.

This Convention contained many very eminent men. George Washington, Alexander Hamilton, James Madison, Benjamin Franklin, Rufus King, Roger Sherman, James Wilson, Gouverneur Morris, and Edmund Randolph would have been distinguished in any assembly. There were fifty-five members in all, most of whom were illustrious for their character and public services. Dr. Franklin had been a member of the Convention of 1754. Three had been present at the Congress of 1765. Seven had been members of the First Continental Congress. Eight were among the signers of the Declaration of Independence. Eighteen were at the same time delegates to the Continental Congress; and of the whole number there were only twelve who had not sat at some time in that body.[1]

If the Convention was composed of extraordinary men, it had before it extraordinary work. They were to form a complete system of republican government, with no example for their guidance. This was their real work, though this was not distinctly present to all of them at first. Some were thinking only of amending the Articles of Confederation; but Hamilton and Madison and others were prepared to enter at once upon the construction of the organic law for a supreme general government, without regard, either in form or substance, to the existing Articles of Confederation.[1]

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[1] Hildreth, III, p. 483.

Soon after the organization of the Convention, Mr. Randolph submitted a series of resolutions, embodying his views of the government desirable to be established. They were also the views of Mr. Madison. Mr. Pinckney, of South Carolina, submitted, on the same day, a draft of a Constitution. All these were referred to the Committee of the Whole, and the discussion was commenced. The first resolution adopted in Committee of the Whole was the first of the series offered by Mr. Randolph, somewhat modified. It was as follows: "*Resolved*, That it is the opinion of this Committee that a national government ought to be established, consisting of a supreme Legislative, Judiciary, and Executive."

On the thirteenth of June, the Committee reported a series of resolutions to the Convention. On the fifteenth, Mr. Patterson of New Jersey offered resolutions expressing the views of those who favored amending the Articles of Confederation, and opposed the formation of a new Constitution. The whole subject was then again referred to the Committee of the Whole, and debated till the nineteenth, when the Committee reported adversely to Mr. Patterson's plan, and submitted the resolutions formerly reported. These resolutions were debated in the Convention from day to day, some great questions, like that of suffrage in the Senate and House of Representatives, being occasionally referred to a special committee. On the twenty-third of July, it was voted to appoint a Committee of Detail, to whom should be referred the proceedings of the Convention, except what related to a supreme executive, for the purpose of reporting a Constitution embodying what had been agreed upon. This Committee, appointed by ballot the next day, consisted of Messrs. Rutledge of South Carolina, Randolph of Virginia, Gorham of Maine, Ellsworth of Connecticut, and Wilson of Pennsylvania. The propositions of Mr. Patterson and of Mr. Pinckney were also referred to this Committee. On the twenty-sixth, after some instructions to the Committee of Detail, the Convention adjourned to the sixth of August.

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[1] Towle's Analysis, p. 31.

This Committee reported at the time appointed, and their draft was considered by the Convention till the eighth of September, when a committee of five was appointed to revise the style and arrange the Articles. This Committee consisted of Messrs. Johnson of Connecticut, Hamilton of New York, Morris of Pennsylvania, Madison of Virginia, and King of Massachusetts. On the twelfth, they reported the Constitution; also a letter to Congress to accompany the Constitution.

The discussions were continued until Saturday, the fifteenth of September, when the Constitution, as amended, was agreed to, all the States concurring.[1] It was then ordered to be engrossed, and on the Monday following it was signed by the members, after striking out 40,000 as the basis for representation and inserting 30,000. The form of signature was this: "Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord, 1787, and of the Independence of the United States of America, the twelfth."

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[1] The votes had been by States, as in the Continental Congress.

Two of the three New York delegates having left the Convention, that State was technically not present, though Alexander Hamilton's signature was attached. Mr. Gerry of Massachusetts and Messrs. Randolph and Mason of Virginia did not sign the Constitution, though it was signed by a majority of the delegates from each of those States.

CHAPTER IV.

THE CONSTITUTION OF THE UNITED STATES.

We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

This first sentence of the Constitution is often called a "preamble." But that term was not applied to it by those who framed the Constitution, and is not found in the original manuscript. It is not a preamble, either in form or substance, but is the enacting clause—an integral part of the Constitution itself. A preamble gives reasons why a resolution should be adopted or an enactment made, but it is no part of the resolution or enactment. The enacting clause, on the contrary, is mandatory. No other part of a statute is more important. Such is the introductory sentence of the Constitution. "We, the People of the United States," for certain purposes, "do ordain and establish this Constitution for the United States of America." "The enacting clause is perfectly authoritative in its source,—the people; peremptory in its action,—ordain and establish; definite and exact in its subject,—this Constitution; and distinct, broad, and extensive in its purposes and ends, embracing the liberty, safety, and welfare of the whole Union, and all its people."[1]

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[1] Farrar's Manual of the Constitution, p. 88.

We have here (1) the authority—We, the People of the United States; (2) the ends for which the Constitution is made, in six particulars; (3) the explicit ordaining of this Constitution, including this introductory clause; (4) the nation for whom it is made,—"the United States of America."

The Constitution was ordained by the people of the United States as a nation. The language presupposes the unity, the nationality, and the sovereignty of the people. The nation began to exist on the fourth of July, 1776. The people then cast off their allegiance to Great Britain, and became a separate nation, possessing the rightful sovereignty of the country. They became united in a national corporate capacity, as one people, and took for their national designation the name, the "United States of America." From that day to the present, they have been known to the world by this name. Wherever in the Constitution these words occur, or the briefer form, the "United States," they signify the nation as a whole; wherever the word "States" occurs it signifies the States considered separately, or as distinguished from the nation.

The purposes for which the Constitution was formed are admirably stated: "To form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

The Congress of the Confederation called the Constitutional Convention for the purpose of forming "a firm national government * * adequate to the exigencies of government and the preservation of the Union." The Union under the Confederation was imperfect and unsatisfactory, and the framers of the Constitution determined to submit to the people an instrument which should be more efficient than the Articles of Confederation. It was a union of the people of all parts of the country, as constituting one nation, which they wished to secure, instead of a mere league of States. Under the Articles of Confederation, there was no distinct judicial department, as there was no executive, while the new Constitution provided for both. The domestic tranquillity had been greatly interfered with because of the power given to the individual States; the central government having little more than the power to recommend. The national government would insure this domestic tranquillity. The words "common defense" and "general welfare" were introduced near the close of the Convention, but they met with no opposition. No language could be more comprehensive than this, "to promote the general welfare."

For these various purposes the people of the United States ordain this Constitution for themselves. It is the organic, fundamental law for the whole people of the country whose corporate name is the United States of America. The nation, as such, establishes this Constitution, making it sufficient for all the exigencies of government. As the organic law of the nation, it is everywhere supreme. Subordinate governments may continue and new ones be established, but always in conformity with this.

The Constitution contains seven articles, which are subdivided into sections. In the original there are no headings to the articles. Both articles and sections are numbered.

Article 1st relates to the Legislative power.

Article 2d, to the Executive power.

Article 3d, to the Judicial power.

Article 4th, to various subjects.

Article 5th, to the mode of amending the Constitution.

Article 6th, to the validity of debts contracted before the adoption of the Constitution, and to its supremacy.

Article 7th, to the mode of its ratification.

Besides these seven articles, fifteen amendments have been made to the Constitution, which are as binding as the original articles.

ARTICLE I.

THE LEGISLATIVE DEPARTMENT.

Sec. 1.—*All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*

Under the Confederation, the whole governmental authority was vested in Congress. There was no Executive department, and no Judicial. The first resolution adopted in the Constitutional Convention was, that a national government ought to be formed, consisting of supreme Legislative, Executive, and Judicial departments. Most legislative bodies have two houses. This is true of all the existing State governments, and was true of all at the time the Constitution was framed, except Pennsylvania and Georgia, which had but one each. The Continental Congress had but one house. While there is a general distribution of powers among the three great departments of the government, the exercise of these powers is not absolutely exclusive. We shall see that the President has a qualified veto on legislation, and that the Senate sometimes acts as a court, and sometimes transacts executive business.

Sec. 2, Clause 1.—*The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.*

Under the Confederation, the members of Congress were chosen annually, and as the legislature of each State should direct. They could also be recalled. The Constitution makes the term of service of the Representatives two years, and requires that the election shall be by "the people." In England, a member of the House of Commons is elected for seven years.

Those who vote for Representatives to Congress must have the qualifications requisite to enable them to vote for members of the lower house of the State legislature, but it is not clear by whom these qualifications are to be prescribed. The common opinion has been that the State prescribes them. The Constitution says simply that the qualifications must be the same; so that whoever can vote for the State representative can vote for the National one also, and *vice versa.* The Constitution does say that Representatives to Congress shall be elected by the *people;* thus virtually saying that the members of the most numerous branch of the State legislature shall also be elected by the people.

Clause 2.—*No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.*

The qualifications of a Representative relate to age, citizenship, and inhabitancy; he must be twenty-five years old, a citizen of the United States for seven years, and an inhabitant of the State where he is elected. It has been decided that the States can not prescribe additional qualifications.

According to the Articles of Confederation, no person could be a Representative in Congress more than three years in six; and each State prescribed the qualifications of its own Representatives. In the British Parliament the required age is twenty-one years; and the same age is required in the different States of our Union. The Representative must have been a citizen of the United States for seven years. The United States is spoken of as *one* country, a nation. It would be nonsense to say a Representative must have been seven years a citizen of the thirteen States. Yet a United States Senator, in an argument for secession, once said, on the floor of the Senate, that he pitied the stupidity of any one who supposed there was or could be a citizen of the United States! There was stupidity somewhere plainly enough, and with the Constitution before us it is not difficult to see where it belonged.

The Representative must be an inhabitant of the State in which he is chosen, but not necessarily of the district. In England, members of Parliament often represent boroughs and cities other than those in which they live. No such case has occurred in this country, however. The Constitution does not require the Representative to be a voter. If a State should come into the Union through conquest or purchase, the inhabitants becoming citizens thereby, the seven years' citizenship would not be insisted on.

Clause 3.—*Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as the shall by law direct. The number of Representatives shal not exceed one for every thirty thousand, but each Stat shall have at least one Representative; and until suc enumeration shall be made, the State of New Hampshir shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia ten; North Carolina, five; South Carolina, five; an Georgia, three.*

When the Continental Congress commenced its sessions, September 5th, 1774, the following resolution was adopted:

"*Resolved*, That in determining questions in this Congress, each colony or province shall have one vote: the Congress not being possessed of, or at present able to procure, proper materials for ascertaining the importance of each colony."

"As if foreseeing the time when population would become of necessity the basis of congressional power, they inserted, in the resolve determining that each colony should have one vote, a caution that would prevent its being drawn into precedent."[1]

The Articles of Confederation followed the same rule, and thus this method of voting prevailed till the Constitution went into operation in 1789. When the Convention decided to form two legislative bodies, the question of voting came up. Some were in favor of an equal representation by States in each branch, while others favored a popular basis, and a proportionate representation in each House. In general, the larger States wished the representation to be in proportion to the importance of the State, while the smaller States favored an equality, as in the Continental Congress.

It was first decided that in the House of Representatives suffrage should *not* be like that under the Confederation, but according to some equitable ratio of representation. The question then arose as to the basis of that ratio. Should the different States send Representatives in proportion to their population or their wealth? And if according to population, who were the people? Should the number of representatives be according to the number of *voters*, or as the *white* population, or as the *free* population, or as the

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[1] Curtis, I, p. 17.

whole? It was decided that the representation from the States should be "according to their respective numbers," that is, as the whole population, but that only three-fifths of the slaves should be counted.

According to the Articles of Confederation, the votes were by States — each State, whether large or small, having one vote. But the quotas for the support of the General Government were as the values of real estate in the several States. In 1783, a proposition was made to alter that provision so that each State should pay "in proportion to the whole number of free inhabitants, and three-fifths of the number of all other inhabitants of every sex and condition, except Indians not paying taxes in any State."[1] The Convention followed, both as to representation and direct taxes, the rule approved by the majority of the Continental Congress in 1783 for the payment of taxes, and this was the origin of the three-fifths rule.

The adoption of this rule was favorable to the Slave States as it increased the number of their Representatives; it was unfavorable as it increased their proportion of direct taxes. The advantage was greater than the disadvantage, however, as they enjoyed the increased number of Representatives continually, while direct taxes have been levied but five times since the adoption of the Constitution.

Slavery having been abolished in 1865, by an amendment to the Constitution, all the colored population must be counted in determining the number of Representatives from a State. If this class of the population could not vote, the Southern States would have nearly twice as many Representatives, in proportion to the number of voters, as the Northern States. Thus, by the census of 1860, Pennsylvania had 2,893,266 white inhabitants, and twenty-four Representatives.

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[1] Jour. Cont. Congress, VIII, p. 123.

North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, and Louisiana had 2,829,785 white inhabitants, and thirty-nine Representatives. If the white inhabitants and *three-fifths* of the blacks gave them thirty-nine Representatives, these States would have fifty Representatives, counting *all* the blacks; that is, with a less voting population than Pennsylvania they would have more than twice as many Representatives. To remedy this inequality, the Fourteenth Amendment provides that if the right to vote is denied to any class of citizens, the basis of representation shall be reduced in proportion.

The basis of representation was reported at forty thousand by the Committee, and so remained till the last day of the Convention, when it was changed to thirty thousand, General Washington himself advocating the change. This is said to have been the only occasion on which he entered into the discussions of the Convention.

A question arose early in Washington's administration as to the construction of this clause. Should the number of Representatives be determined by dividing the *whole population* of the United States by the number taken as the basis of representation, or by dividing the *population of the respective States* by that number, and taking the sum of the quotients. The former method would give the largest number of Representatives, and was adopted by Congress in the bill first passed. But the bill was returned by President Washington, as conflicting with the language of the Constitution. Congress yielded to the judgment of the President; and the method then adopted, of dividing the population of each State by the basis of representation, continued till 1842, when an act of Congress provided that there should be one Representative for every 70,680, and for a fraction greater than one-half of this number. By act of May 23d, 1850, it was provided that the whole population of the United States should be divided by the number 233, and the quotient be the ratio. With this ratio the population of each State is divided, the quotient being the number of its Representatives. The number of Representatives necessary to make 233 are given to the States having the largest fractions.

The first enumeration of the people was made in 1790, the second in 1800, and so on. After the census returns have been made, Congress provides by law for the representation, to take effect March 4th of the third year after. The Constitution provided for 65 members for the First Congress. In March, 1793, there were 105; in 1803, 141; in 1813, 181; in 1823, 212; in 1833, 240; in 1843, 223. In 1850, as stated above, the number was fixed at 233, and the Secretary of the Interior was directed to ascertain the number to which each State was entitled, and make certificate of the same to the Governors. In all the cases previous to this time the specific number for each State had been given in the act of Congress. Before an election had been held under the act of 1850, Congress changed the number from 233 to 234, to remain till the next apportionment. The additional one was given to California. In 1862 the number for the next ten years was fixed at 241, the eight additional ones (to 233) being apportioned to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island.

The number of Representatives for the different decades, and the number of inhabitants for a Representative are as follows:

Period.	No. of Members.	Ratio of Population.
1789–1793	65	——
1793–1803	105	33,000
1803–1813	141	33,000
1813–1823	181	35,000
1823–1833	212	40,000
1833–1843	240	47,700

Period.	No. of Members.	Ratio of Population.
1843–1853	223	70,680
1853–1863	234	93,500
1863–1873	241	127,941
1873–1883	292	130,533

The actual number of Representatives has usually been greater than that here given, owing to the admission of new States. Thus the Forty-second Congress (1871–1873) had 243, instead of 241; Nevada having been admitted in 1864, and Nebraska in 1867.

Each organized Territory is allowed by law to send one delegate to Congress, who may participate in the discussions, but can not vote. In the Forty-second Congress there were nine delegates from the Territories, and one from the District of Columbia.

Clause 4.—*When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.*

Vacancies may be created by death, resignation, removal, or accepting incompatible offices. All these cases have occurred. The person thus elected to fill a vacancy serves only the remainder of the term.

Clause 5.—*The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.*

The Speaker is the presiding officer of the House. The presiding officer of the Continental Congress was styled President. Where a legislature is composed of two houses, the presiding officer of the upper house is usually called President, and of the lower house Speaker. The British House of Commons choose their Speaker, but the approbation of the Crown is necessary.

The other officers of the House of Representatives are a Clerk, Sergeant-at-Arms, Door-keeper, Postmaster, and Chaplain.

The office of Clerk is one of great importance, and is usually filled by an ex-member of Congress. The Clerk presides at the organization of the subsequent Congress. The Congress that convened December 3d, 1855, did not succeed in electing a Speaker till the second of February, 1856, having balloted 133 times. Mr. N. P. Banks was the successful candidate. In the case of the Thirty-sixth Congress, in the winter of 1859–60, there was a delay nearly as long. Mr. William Pennington was elected. A list of the Speakers will be found in Chapter VII.

The Constitution gives to the House of Representatives the sole power of impeachment, and to the Senate the sole power to try the party impeached. As a citizen can not be tried before a court until he has been indicted by a grand jury, so an officer of the Government can not be tried by the Senate until articles of impeachment have been brought against him by the House of Representatives.

The method of proceeding, so far as the House is concerned, is this:

A committee is appointed to inquire into the conduct of the officer supposed to have been guilty of acts requiring impeachment. If they report in favor of impeachment, the question is acted on by the House. Should the House determine on impeachment, articles are prepared, embodying the charges, on each of which action is taken. A committee is then appointed to prosecute the impeachment before the Senate. The method of trial and a list of the persons impeached will be given in a subsequent part of the work.

Sec. 3, Clause 1.—*The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.*

In the Convention that framed the Constitution there was great difference of opinion as to the mode of electing Senators, as to their term of service, and as to the rule of suffrage. Some were in favor of a nomination by the State legislatures and an election by the United States

House of Representatives; others would have the President appoint from those nominated by the State legislatures; others would have them chosen by the House of Representatives; and others still proposed an election by the people.

As to the term of office, some advocated a life tenure, or during good behavior; some, a term of nine years; others, seven; others, six; and others, four.

The question of voting was the most difficult. As in the Continental Congress the States were on an equality as to their votes, the smaller States wished the same rule to hold under the Constitution; while the larger States claimed that an equality of votes in either House would be unjust. The smaller States finally conceded that in the House of Representatives the number of members should be in proportion to population; but they insisted that in the Senate the States should be equal. But the larger States were tenacious as to the Senate as well as to the House; and the Committee of the Whole reported, "That the right of suffrage in the second branch of the national legislature ought to be according to the rule established for the first." This report was adopted by the Convention; but the matter was subsequently referred to a committee of one from each State, who reported the rule as it now stands. The final vote was: Affirmative—Connecticut, New Jersey, Delaware, Maryland, North Carolina — 5; Negative — Pennsylvania, Virginia, South Carolina, Georgia — 4. Massachusetts divided. "So that this greatest and most difficult of all the important questions which the Convention was called upon to solve, was carried by less than a majority of the States present, and by the concurrence of less than one-third of the represented population."[1]

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[1] Towle, p. 69.

Mr. Madison strongly opposed the principle finally adopted. In his letter to Mr. Sparks, he said the Gordian knot of the Convention was the question between the larger and smaller States as to the rule of voting in the Senate; the latter claiming, the former opposing, the rule of equality.[1]

By the Articles of Confederation each State might send not more than seven delegates to Congress, nor less than two. They were elected annually, but no one could sit more than three years in six. The States could recall their delegates at any time. Under the Constitution, we see that each State can send two Senators, and as many Representatives as her population entitles her to; that there is nothing to prevent a Senator or Representative from being returned as often as his constituents desire; and that, when a Senator or Representative has been elected, the State has no power to recall him.[2]

Though all the States have the same number of Senators, and each Senator has one vote, this is not the same as voting by States, as was done in the Continental Congress. If both the Senators of a State are present, and vote on opposite sides of a question, their votes neutralize each other, as under the Confederation. But if only one of two delegates from a State was present in the Continental Congress, his vote could not be counted; under the present Constitution the vote of one is counted whether his colleague is present or not.

The Constitution does not prescribe the precise method in which the legislature of a State shall choose the Senators, whether by joint ballot or by concurrent resolution. It is not properly an act of legislation, and the Governor of a State has no participation in it, as, in some States, he has in ordinary legislation.[1]

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[1] Elliot, I, p. 508.

[2] Thomas H. Benton was thirty years a Senator from Missouri. Charles Sumner and Henry Wilson were elected four times each from Massachusetts.

On the 25th of July, 1866, Congress passed an "Act to regulate the times and manner of holding elections for Senators in Congress." It provides, that the legislature of each State, which shall be chosen next preceding the expiration of the time for which any Senator was elected, shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator as follows:

Each House shall name a person for Senator by a *viva voce* vote; the next day at noon the two Houses shall meet in joint assembly, and if the same person shall have received a majority of all the votes in each House he shall be declared duly elected.

If no person has received such majorities, the joint assembly shall choose by a *viva voce* vote; and whoever shall receive a majority of all the votes cast, a majority of each House being present, shall be declared elected.

If no person is elected the first day, the joint assembly shall convene each day at twelve o'clock and take at least one vote each day during the session, or until a Senator is elected.

If a vacancy exists when the legislature convenes, the same steps shall be taken; and if a vacancy occurs during the session of the legislature, they shall proceed to elect on the second Tuesday after they have had notice of the vacancy.

Clause 2.—*Immediately after they shall be assembled in consequence of the first election, they shall be divided as*

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[1] New York had no Senators for the first few months of the First Congress, because of disagreement between the two branches of the legislature. For the same reasons she had no Electors.

equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

When the Senate convened, March 4th, 1789, there were twenty Senators present: Rhode Island and North Carolina had not yet ratified the Constitution, and New York had not elected her Senators. These twenty were divided by lot among the three classes, making seven of the first, seven of the second, and six of the third. When the two Senators from New York took their seats, July 26th, one was placed in the third class, and the other in the first, making eight of the first class, and seven of each of the others. The North Carolina Senators, who came in November 27th, fell into the second and third classes. The classes had now eight each in them. Thus the Senators of each new State have been placed in different classes, that their terms might not expire at the same time; and the classes have been kept substantially equal, so that the terms of one-third of the Senators may expire every second year.

If a Senator from a new State is placed in the third class, we are not to infer that his term will be six years. As the Constitution went into operation in 1789, the terms of the Senators of the first class would expire in 1791. The terms of their successors would expire in 1797, 1803, 1809, and so on. The terms of the Senators of the second class would expire in 1793, 1799, 1805, etc.; and those of the third class in 1795, 1801, 1807, etc. The Senators from Ohio took their seats in 1803. One of them was placed in the first class, and the other in the third. As terms of Senators of the first class expire in 1809, 1815, etc., the one in the first class would remain in office six years, while the one in the third class would remain but four, the terms of the third class expiring in 1807.

The Senate is a permanent body, while the House of Representatives is changed every two years. As the Constitution went into operation on the fourth of March, 1789, the term of office of every Senator, as well as Representative, ends on the fourth of March of a year denoted by an odd number. A Congress is measured by the term of office of the Representatives; the first extending from the fourth of March, 1789, to the fourth of March, 1791. The Forty-fourth Congress began March 4th, 1875, and ended March 4th, 1877.

When a vacancy is temporarily filled by executive appointment, the Senator thus appointed holds his office till the close of the next succeeding term of his State legislature.[1]

The legislature of a State sometimes adopt resolutions in which their Representatives in Congress are "requested," and their Senators "instructed," to vote for certain measures; thereby implying that the legislature have the right to "instruct" their Senators, while they have not the right in regard to their Representatives. But there is no right of instruction in either case. The Constitution prescribes the mode of election for the Senator and for the Representative; one is elected by the legislature, and the other by the people of his district. The mode is immaterial; it is but a mode. Once elected, the Senator, as well as the Representative, must be guided by his own enlightened judgment, and can not be instructed by those who elected him. Neither is the Senator or Representative to consult exclusively the interests of his own State or district. He is a member of a body which legislates for the nation. He is to consult the interests of the whole people, and not merely those of a section.

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[1] Towle, p. 72.

Clause 3.—*No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.*

A Representative must be twenty-five years of age; a Senator, thirty: a Representative must have been a citizen seven years; a Senator, nine. The condition as to residence is the same for both.

The age required in a Roman Senator was thirty years. In Rome, majority was not attained till the age of twenty-five; the same is true in France and Holland.[1]

Two cases have occurred of elections to the Senate without the requisite number of years of citizenship. Albert Gallatin was elected from Pennsylvania in 1793; his seat was vacated by resolution of the Senate. James Shields was elected from Illinois in January, 1849; his seat was vacated also, but he was re-elected in October of the same year, his disability having been by that time removed.

There is nothing to prevent a Senator's changing his residence to another State after his election. He is not the representative of a particular State.

Clause 4.—*The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.*

The Convention that formed the Constitution did not at first contemplate such an officer as Vice-President. The Senators were to elect their own presiding officer, who was to become President of the United States in case of the death, resignation, or removal of that officer.

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[1] Story.

But as the mode of electing a President, which was adopted by the Convention, required two persons to be voted for at the same time, the one receiving the highest number of votes to be President, this provision for a Vice-President was made near the close of the session. The Lieutenant-Governor of a State is usually the presiding officer of the State Senate.

The casting vote of the Vice-President can be of efficacy only when in favor of a measure. If he had no vote, no measure could be carried upon which the Senate were equally divided. As it is, he has helped to carry some measures of great importance. By a rule of the Senate, adopted in 1828, "every question of order shall be decided by the president without debate, subject to appeal to the Senate."

In the British House of Lords, the Lord Chancellor, or some other person appointed by the Crown, presides. If no person is appointed, the Lords elect.

Clause 5.—*The Senate shall choose their other officers, and also a President* pro tempore, *in the absence of the Vice-President, or when he shall exercise the office of President of the United States.*

The officers of the Senate are a Secretary, Chief Clerk, Executive Clerk, Sergeant-at-Arms, Door-keeper, and Chaplain.

The President *pro tempore* seems not to be appointed permanently, except on the death of the Vice-President, or on his becoming President. Thus on the twenty-third of March, 1869, Mr. Anthony of Rhode Island was chosen President *pro tempore*, Vice-President Colfax having given notice that he should be absent for a few days. On the twenty-ninth of March the Vice-President resumed the chair. On the ninth of April Mr. Anthony was elected again, the Vice-President being absent. It is customary thus to continue to elect the same gentleman. Mr. Ferry was President *pro tempore* when Vice-President Wilson died in 1875.

When the Vice-President becomes President of the United States, the President *pro tempore* receives the salary of the Vice-President. The President *pro tempore* is not restricted to a casting vote; he has his vote as Senator.

Clause 6.—*The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.*

The Senate, whose principal functions are legislative, is here clothed with judicial powers. All those who are impeached by the House of Representatives must be tried by the Senate.

In Great Britain, the power of impeachment is with the Commons, and the power of trial with the Lords; but the Lords do not take a special oath, and a majority is sufficient to convict. Our method is thus more favorable to the party under trial than the British.

When the President is tried, the Chief Justice presides, because the Vice-President is interested in the result of the trial. If the President is convicted, the Vice-President succeeds to the office. When Andrew Johnson was tried in 1868, Chief Justice Chase presided. If Mr. Johnson had been convicted, the President *pro tempore* would, by the law of March 1st, 1792, have succeeded to the Presidency; on that account it was claimed that he ought not to participate in the trial. His own view of his right and his duty differed from this, however, and he voted on the case as other Senators.

As the Constitution provides (Art. II, Sec. 1, Clause 6) that, in case of the inability of the President to discharge the duties of his office, Congress may declare what officer shall act as President till the disability be removed, it has been claimed that Congress might make a trial under impeachment such a disability, and provide that during the trial the President should not exercise the office. No such law has been enacted, and President Johnson continued to discharge his official duties from the twenty-fourth of February, when the House of Representatives voted to impeach him, to the twenty-sixth of May, when the final vote was taken.

There have been seven cases of impeachment: William Blount, Senator from Tennessee, in 1798; John Pickering, District Judge of New Hampshire, in 1803; Samuel Chase, Associate Justice of the Supreme Court, in 1804; James H. Peck, District Judge of Missouri, in 1830; West H. Humphries, District Judge of Tennessee, in 1862; Andrew Johnson, President, in 1868; and W. W. Belknap, Secretary of War, in 1876. Judges Pickering and Humphries only were convicted.

Clause 7.—*Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.*

In England, there is no such limitation in the punishment. The person convicted may be fined, or imprisoned, or banished, or put to death. But in our country, the punishment is political—removal from office and disqualification for it. This judgment, however, does not prevent a subsequent trial by jury for the criminal violation of law.

In a subsequent Article it is provided that a civil officer of the United States, impeached and convicted, "shall be removed from office." This punishment is imperative; he may be punished further by disqualification to hold office. The punishment inflicted on such an officer, who has been convicted by the Senate, can not be less than removal from office; it can not be greater than removal and disqualification combined. Judge Pickering was removed from office only; Judge Humphries was removed from office and declared disqualified to hold any office of honor, trust, or profit under the United States.

Sec. 4, Clause 1.—*The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.*

By Act of Congress, passed June 25th, 1842, it was provided that Representatives should be elected by districts of contiguous territory equal to the number of Representatives. This is believed to have been the first instance of any regulations by Congress touching elections of Senators or Representatives. In 1866 (July 25th), an act was passed to regulate the mode of choosing Senators, as already stated. In 1871 (February 28th), Congress enacted that all votes for Representatives in Congress should be by written or printed ballots, any law of any State to the contrary notwithstanding. In 1872 (February 2d), provision was made that Representatives should be elected on the same day throughout the United States, viz., on the Tuesday after the first Monday in November; to go into effect in 1876. By act of 1875, states whose constitutions prescribed a different day were exempted from its effect.

This clause, giving to Congress the ultimate control as to elections for Senators and Representatives, met with little opposition in the Convention, but it was opposed in some of the State Conventions called to ratify the Constitution. "Its propriety," says Mr. Hamilton, "rests upon the evidence of this plain proposition, that every government ought to contain in itself the means of its own preservation."[1] But the opponents of the Constitution maintained that this clause gave to Congress the whole ultimate control of elections for members of Congress, including the qualifications of electors and elected, except as stated elsewhere in the Constitution. Patrick Henry said: "The control given to Congress over the time, place, and manner of holding elections will destroy the end of suffrage. * * * Congress may tell you they have a right to make the vote of one gentleman go as far as the votes of a hundred poor men. * * * They may regulate the number of votes by the quantity of property, without involving any repugnancy to the Constitution."[2]

The practice has been for the States to prescribe the qualifications of voters in their constitutions. Mr. Farrar claims, on the other hand, that it was well understood by both parties at the time the Constitution was framed, "that the whole law of elections, subject to the provisions of the Constitution, was under the control of Congress."[3]

The Constitution of the Confederate States says, "No person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, State or Federal." Thus their federal Constitution prescribed qualifications for voters at State elections.

The restricting clause, as to the place of choosing Senators, was inserted that Congress should not have the right to prescribe to the State legislatures their places of meeting.

Clause 2.—*The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.*

Annual sessions are thus made imperative. As the term of each Congress is two years, there would be two regular sessions during each term. In eighty-eight years from March 4th, 1789, or to the end of the Forty-fourth Congress, there have been eleven instances of three sessions by the same Congress.[1] For the first thirty-two years, the regular sessions began on the first Monday in December about half the time: since that, all the regular sessions have begun on that day.

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[1] Federalist, No. 59.

[2] Elliot's Debates, III, pp. 60, 175.

[3] Manual of the Constitution, p. 268.

The first regular session of each Congress usually continues from December till the following spring or summer. The Thirty-first Congress was in session till the thirtieth of September—three hundred and two days. The second regular session closes at noon on the fourth of March, being thus about three months long. But though the constitutional term of Congress ends at noon on the fourth of March (it formerly ended at midnight of the third), the Journals of the Senate and House of Representatives bear the date of the *third* of March, and the laws signed by the President after midnight are dated on the third and not on the fourth.

By act of January 22d, 1867, each new Congress was required to meet "at twelve o'clock, meridian, on the fourth day of March, the day on which the term begins for which the Congress is elected." Under this act each Congress had three sessions; the first commencing on the fourth of March, the second on the first Monday of December of that year, and the third on the first Monday of December of the following year. The first session was very short, and the second and third were regarded as the regular sessions. This act has now been repealed. It was in force during the Fortieth, Forty-first, and Forty-second Congresses.

Under the Articles of Confederation, Congress might adjourn to any time within the year, but no period of adjournment could be for a longer time than six months. Congress was thus a permanent body, and not subject to periodic dissolution as now.

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[1] There were three sessions in the First Congress, the Fifth, Eleventh, Thirteenth, Twenty-fifth, Twenty-seventh, Thirty-fourth, Thirty-seventh, Fortieth, Forty-first, and Forty-second.

Sec. 5, Clause 1.—*Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.*

The certificate of election furnished by the State authorities is *prima facie* evidence that the person holding it is entitled to a seat, but it is not conclusive. Each House has a Committee on Elections, to whom are referred all doubtful cases, and on their report the House decides: from this decision there is no appeal. The recent war has multiplied the number of such cases, and, in repeated instances, persons holding certificates of election have not been deemed entitled to membership. The British Parliament and most legislative bodies exercise the same power as to the admission of members.

A majority seems to be a suitable quorum. In the British House of Commons, composed of over six hundred members, forty-five is a quorum. Under the Articles of Confederation, no question, except that of adjournment, could be decided unless by a majority of all the States, and for the most important questions nine States were required, *i. e.*, two-thirds. There was no power to compel attendance, and business was frequently delayed through the absence of members. In one instance, Congress assembled on the third of November, but there was no quorum till the fourteenth of January. Rhode Island once recalled her delegates, and so prevented the transaction of important business.

In the State of Ohio, no bill can be passed without the votes of a majority of all the members elected to each House. The new constitution of Illinois has a similar provision.

By a rule of the House of Representatives, fifteen members, including the Speaker, can compel attendance.[1]

Clause 2.—*Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.*

The "rules of proceedings" constitute what is called Parliamentary Law. When the first Congress convened, in 1789, the House of Representatives established rules, some of which are still in force. At the beginning of the first session of each Congress it is usual to adopt the rules of the previous Congress until otherwise ordered, and a committee is appointed to report new rules during the session. The rules of the House of Representatives may be found in the Appendix of their Journal.

The power to punish a member has been exercised by both Houses. William Blount, Senator from Tennessee, was expelled in 1797, and Jesse D. Bright, Senator from Indiana, in 1863.

It seems to be settled that a member may be expelled for any misdemeanor which, though not punishable by any statute, is inconsistent with the trust and duty of a member.

The Constitution does not confer any express power to punish *contempts*, *i. e.*, offenses by persons not members of the House, but this power has been considered to belong to legislative assemblies as such, and the Supreme Court has so decided. But the power to punish is held to extend only to imprisonment, and this only until the dissolution of the House by which the punishment is inflicted.

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[1] Journal H. R. Thirty-ninth Congress, p. 1204.

Clause 3.—*Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.*

It is usual for both Houses to have open sessions, except the Senate when in Executive session, *i. e.*, acting upon nominations made by the President, or engaged in discussion of treaties. The Convention that framed the Constitution sat with closed doors, and so did the Senate from the beginning of the First Congress until the second session of the Third Congress.

There are three methods of voting in Congress. The usual method is *viva voce;* the presiding officer deciding by his ear. If he is doubtful as to the result, he makes a count; or, if a member questions the correctness of his decision, a division of the House is called for, and tellers are appointed who count the voters. But in important questions the roll of the House is called by the Clerk, and each member's vote is recorded in the journal. This is voting by "Yeas and Nays." It enables the people to know how their representatives vote.

The Articles of Confederation required the yeas and nays to be taken when called for by a single member. The present provision, making the yeas and nays dependent on the call of one-fifth the members present, is a decided improvement on the former one. A factious minority often avail themselves of this rule to delay proceedings, and prevent the passage of a bill. Thus a member moves for adjournment, for example, and asks for the yeas and nays. If a fifth of those present concur in this request, the roll must be called, occupying much time. Oftentimes the member moving to adjourn votes against his own motion.

Clause 4.—*Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.*

Under the Articles of Confederation, Congress could adjourn to any time within the year, and to any place within the United States, but no adjournment could be for a longer period than six months. The present provision prevents either House from interrupting, by adjournment, the progress of business.

Sec. 6, Clause 1.—*The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.*

Under the Articles of Confederation, each State paid its own members of Congress. By providing for their payment from the national treasury, the Constitution makes them independent of the States. In the Convention Mr. Madison said, "he could not see any chance of that stability in the general government the want of which was a principal evil in the State governments," if the members were left dependent on the States for their compensation.

In the British Parliament the members receive no compensation. And in our Convention, Gen. Pinckney suggested, as the Senatorial branch was to represent the wealth of the country, that no salary be allowed.

This was seconded by Dr. Franklin, but disagreed to; the vote standing six to five.

The compensation is to be ascertained by law; that is, Congress itself is authorized by the Constitution to determine it. The First Congress passed an act fixing the allowance at six dollars a day while in attendance, and six dollars for each twenty miles of travel in going and returning. The Speaker of the House, besides his pay as Representative, was to have six dollars a day additional.

This rate continued till 1815, except that for one year, 1795, the Senators received seven dollars a day, and the same for each twenty miles of travel. By act of March 19th, 1816, the compensation was fixed at fifteen hundred dollars a year for each Senator and Representative: the Speaker to receive three thousand dollars, and the President *pro tempore* of the Senate, the same when there should be no Vice-President. This was repealed in February, 1817, having been operative only during the Fourteenth Congress.

In 1818—January 22d—the *per-diem* system was restored, to be operative from March 4th, 1817, the rate being established at eight dollars a day, and eight dollars for each twenty miles of travel: the Speaker, and the President *pro tempore* of the Senate, in the absence of the Vice-President, receiving eight dollars a day additional.

This rate continued till the Thirty-fourth Congress, which passed an act—August 16th, 1856—establishing the compensation at three thousand dollars a year, and eight dollars for each twenty miles going and returning, for two sessions only: the Speaker receiving six thousand dollars; and the President *pro tempore* of the Senate, in the absence of the Vice-President, the salary of that officer, which had been raised to eight thousand dollars.

In 1866—July 28th—it was raised to five thousand dollars a year, and mileage at the rate of "twenty cents a mile, to be estimated by the nearest route usually traveled in going to and returning from each regular session." The pay of the Speaker was fixed at eight thousand dollars per annum, this being the salary of the Vice-President.

In 1873, March 3d, another change was made. The compensation was raised from five thousand to seven thousand five hundred dollars, with actual traveling expenses. The Speaker of the House and the President *pro tempore* of the Senate were to receive ten thousand dollars. In 1874, January 24th, the act was repealed so far as concerned these salaries, thus making them, as before, five thousand and eight thousand dollars respectively.

The change made in 1816, from six dollars a day to fifteen hundred dollars a year, was received by the people with great disfavor, and many members were not returned to the next Congress in consequence. The more recent change, in 1873, also called forth very severe criticism. The members were blamed for the large increase of salary, and still more for making it retroactive. A number of members refused to receive the increase for the time already expired. The retroactive feature is, however, not peculiar to the act of 1873. The law of 1816 — March 16th — was operative from March 4th, 1815. That of August 16th, 1856, increased the compensation from March 4th, 1855. So that of July 28th, 1866, took effect from March 4th, 1865. Every act of Congress, therefore, to increase the pay of Senators and Representatives, has been retroactive in its operation, covering a period varying from twelve months to twenty-four.

All the acts prior to that of 1866 were separate and independent acts; but the one of 1866, and that of 1873, were sections in appropriation bills. They were both passed on the last days of the respective sessions.

From 1789 to the present time, then, the compensation has been as follows: 1789 to 1815, $6.00 a day; 1815 to 1817, $1500 a year; 1817 to 1855, $8.00 a day; 1855 to 1865, $3000 a year; 1865 to 1871, $5000 a year; 1871 to 1874, $7500 a year; 1874 and since, $5000 a year.

By act of March 29th, 1867, each Senator, Representative, and Delegate, after having taken the required oath, is entitled to receive his compensation at the end of each month.

The privilege of freedom from arrest has belonged to legislative bodies in Europe for many years. The exceptional cases are what are called indictable offenses. Whoever should cause the arrest of a member would be liable for trespass, and might also be punished for contempt of the House. The privilege commences from the time of the election, and before the member takes his seat or is sworn.

Freedom of debate is secured by this clause. But the privilege is confined to words spoken in the course of parliamentary proceedings, and does not cover things done beyond the place and limits of duty; while a member can not be questioned for a speech delivered in the House, he might be liable if he should cause the speech to be published.

The privilege from arrest secures the member, of course, against all process, the disobedience to which is punishable by attachment of the person, as a *subpœna*, or a summons to serve on a jury. (Story, Vol. II, p. 608.)

Clause 2.—*No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.*

The first part of this clause was intended to prevent corruption and secure the integrity of the members. It would tend to diminish the temptation to create lucrative offices which they themselves might hope to fill. But the security is only partial, as an office created during the term of a member might be held by him many years after his membership had expired.

The acceptance of an office under the United States, by one who has been elected a member of Congress and has taken his seat, operates as a forfeiture of his seat. But if one holding an office under the United States is elected to Congress, he may hold the office until he is ready to take his seat, when he must resign.

In Great Britain, the members of the Cabinet may also hold seats in Parliament, but our Constitution prohibits Cabinet officers from being members of Congress. The subject has been often discussed, but no serious attempt has been made to amend the Constitution in this respect. By the present arrangement, the Legislative and Executive departments of the government are more widely separated, and any undue influence of the Executive is better guarded against.

Sec. 7. Clause 1.—*All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.*

This is the practice in the British Parliament. All bills for raising revenue must originate in the House of Commons. The subject was discussed at great length in the Convention, and was not finally decided till near the day of adjournment. It was so connected with other provisions of the Constitution as to render it difficult to ascertain by what principles it was settled. As first acted upon by the Convention, the clause was much more comprehensive than in its present form: "That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature, and shall not be altered or amended by the second branch."

Our circumstances differ so widely from those of Great Britain that there seems to be no sufficient reason why the Senate may not *originate* bills for raising revenue as well as *amend* them; why they may not provide for raising revenue as well as make appropriations. During the third session of the Forty-first Congress, the Senate passed a bill to *repeal* the law imposing the income tax. But the House of Representatives, instead of acting upon it in the usual way, passed a resolution calling the attention of the Senate to this clause of the Constitution.

Bills looking to the raising of money have originated in the Senate and have passed into laws: as the bill to establish the post-office, that to establish the mint, and bills to regulate the sale of the public lands. *Raising revenue* is understood thus to be confined to *levying taxes.*

Clause 2.—*Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large in their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented* *to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.*

This clause gives the President some participation in legislation. The Executive and Legislative departments are not entirely disjoined. But the President's participation is negative. This returning of a bill with objections is called *vetoing* the bill, though the word *veto* does not occur in the Constitution. In Great Britain the sovereign possesses an absolute veto, but it is said not to have been exercised since 1692, in the reign of William III, with, perhaps, a single exception.

In the Convention various plans were discussed for revising the bills passed by Congress. One was to give the right of revising all bills to the Executive and the Judiciary. This was Mr. Randolph's plan, and was approved by Mr. Madison. Some members wished the President to have an absolute veto. At one time the Convention voted in favor of requiring a vote of three-fourths of each House in order to pass a bill over the President's veto.

The present method has commended itself to the people of the country. It is, doubtless, better than one admitting an unqualified veto, and better than one that should require a three-fourths vote in each House. The practice in the State governments is not uniform. In some the Governor has no veto, while in others a bill may be passed over a veto by a bare majority in each House.

The veto power has been used by most of the Presidents. Washington vetoed *two* bills; Madison vetoed *five* and retained *one;* Monroe vetoed *one;* Jackson vetoed *seven* and retained *two;* Tyler vetoed *five;* Polk, *three;* Pierce, *four;* Buchanan, *one;* Johnson vetoed *twenty-one* and retained *nineteen* which became laws. No bill was passed over the veto of the President till the administration of Mr. Tyler. One was so passed in his administration, four in that of Mr. Pierce, and seventeen in that of Andrew Johnson.

It has been decided by the Senate—July 7th, 1856—that two-thirds of a *quorum* only were requisite to pass a bill over the President's veto, and not two-thirds of the whole Senate.

There are three methods by which a bill may become a law. (*a.*) If it is passed by a majority of each House and is signed by the President. (*b.*) Without the signature of the President, if it receives the votes of two-thirds of the members present of each House, after having been returned by the President with his objections. (*c.*) If, having been passed by each House and sent to the President, it is retained by him ten days (Sundays excepted), it becomes a law, unless Congress has adjourned in the mean time.

Clause 3.—*Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.*

This clause prevents the passage of laws under the name of resolutions, etc., without the approval of the President. The process is the same, no matter what may be the term employed, whether order, resolution, vote, or bill. Whatever does not relate to the internal government of the individual House, as elections, votes of censure or thanks, etc., requires the signature of the President, or a two-thirds majority in each House. A joint resolution, approved by the President, or duly passed without his approval, has all the effect of law.

A resolution of Congress proposing an amendment to the Constitution does not require the signature of the President; though in one or two cases such resolutions have been sent to him through inadvertence. In February, 1865, Congress passed a joint resolution that the electoral votes for President and Vice-President, given in certain States then in rebellion against the government, should not be received or counted. The President approved the resolution, but said in a message that his approval was not necessary. (The electoral votes were counted on the eighth, though the official approval of the President was not received till the tenth.) In March, 1866, the two Houses determined that neither House should consider the credentials of any man presented as a member from a State lately declared to be in rebellion, until Congress shall have decided that such State is entitled to representation therein. This resolution was not sent to the President.

Sec. 8.—*The Congress shall have power* ——

In Article I, Section 1, it is declared that all legislative powers granted in the Constitution shall be vested in a Congress of the United States. In Section 8 it is declared more specifically that Congress shall have power, *i. e.*, rightful authority, to legislate on various subjects. But it is not intended that this shall be considered an exhaustive enumeration of the powers of Congress, or that Congress shall not legislate except on the matters here mentioned; for the eighteenth clause gives Congress power "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all *other* powers vested by this Constitution in the government of the United States, or in any department or officer thereof." The Constitution itself in other sections requires of Congress the exercise of powers not specifically mentioned in this section; and it implies in various places that

Congress must do what it is nowhere in the Constitution expressly authorized to do. Some of these cases will be cited, and the subject will be still further discussed, in connection with the consideration of the eighteenth clause.

Clause 1.—*To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.*

Every civil government must have a revenue for its own support, and the subject of raising funds is appropriately placed in this first clause. Under the Articles of Confederation the common treasury was supplied by the several States, in proportion to the value of the land with the buildings and improvements. Taxes were not laid and collected by the general government, but were levied by the authority and direction of the legislatures of the several States. The subject was discussed in the Convention with great earnestness, and the result was to give to Congress the control of the whole subject of taxation and revenue so far as relates to the administration of the general government.

The obvious construction of the language of the clause makes it confer upon Congress the power to raise a revenue for the purpose of paying the debts and providing for the common defense and general welfare. This involves the power to pay the debts and provide for the general welfare.

The four terms used, *taxes*, *duties*, *imposts*, and *excises*, were originally of nearly the same signification. They imply pecuniary burdens imposed by a civil government upon its subjects. This clause distinguishes between *taxes* and the others, inasmuch as it states that "all *duties*, *imposts*, and *excises* shall be uniform throughout the United States." In Article I, Section 2, Clause 3, Representatives and *direct taxes* are required to be apportioned among the several States in proportion to their population.

In Political Economy, that is a *direct* tax which comes from the property of the nominal payer, while an *indirect* tax is assessed on one person but is really paid by another. Duties on goods imported are indirect, as the consumer pays them. Poll taxes and those imposed directly on property are direct. The provision of the Constitution as to direct taxes prevents our strict observance of this distinction; and the courts have decided that taxes on carriages, for example, are not direct taxes, though Political Economy would so regard them. So also of taxes on incomes.

The taxes levied by the State governments, by counties, and by cities and towns, are for the most part direct taxes. The constitution of the State of Ohio prohibits poll taxes, and requires that all property shall be taxed equally. The revenues of the general government are almost wholly from indirect taxation. Congress has never levied a general tax on *all* the property of the country. Until the war of the rebellion the general government derived nearly all its revenues from duties on goods imported into the country. Before that time a direct tax had been laid but four times since the adoption of the Constitution, viz., in 1798, 1813, 1815, 1816. In these cases the tax was upon lands, houses, and slaves. The amount of tax to be paid by each State, was named in the act, and was in proportion to the population, and not according to the property of the State. In one or two of the cases the amount of tax assessed upon each county of the several States was given. In the act of 1798, the tax on each slave was fifty cents. In the others all the property taxed — dwelling-houses, lands, and slaves — was to be assessed at its true value. In each case the tax was in force but a single year.

In August, 1861, after an interval of forty-five years, another direct tax was levied. This was in consequence of the war of the rebellion. The act required that twenty millions of dollars a year be levied on all lots of ground with their improvements and dwelling-houses. The amount was apportioned among the States and Territories and the District of Columbia, according to their population, as required by the Constitution.[1] The law provided that any State or Territory might collect its quota, and be allowed fifteen per cent. of the amount for the expense of collection. All the loyal States and Territories, except Delaware and Colorado, assumed the payment of the tax.[2] This law, like the others of an earlier period, was in force but one year. By act of July 1st, 1862, its operation was suspended, save as to the collection of the first annual tax, until April 1st, 1865.[3] By act of June 30th, 1864, it was again suspended till Congress should take further action.[4]

The second act passed by Congress after the adoption of the Constitution was, "for laying a duty on goods, wares, and merchandises imported into the United States." All civilized nations adopt this as one of the methods of raising revenue. Whatever may be their theoretical notions as to free trade, none hesitate to lay duties on a portion of the merchandise which they import. There is great diversity of opinion as to the articles upon which duties shall be levied; whether it is or is not expedient to impose duties upon those which would come into competition with the products of the country itself. It is worthy of notice that the act alluded to above, which was passed July 4th, 1789, had a preamble, as follows: "Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares, and merchandises imported: Be it enacted," etc.

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[1] The Territories had not been named in any previous act imposing direct taxes; nor the District of Columbia, prior to 1815.

[2] Report of Commissioner of Internal Revenue for 1870, p. 14.

[3] Statutes at Large, XII, 489.

[4] Ibid, XIII, 304.

We have seen that until 1861 direct taxes had been levied for only four years since the adoption of the Constitution; but duties on goods imported have been collected from the first, and have formed until recently the chief source of revenue. The term *excises*, though used in the Constitution, does not appear in the laws enacted by Congress. As commonly used, it signifies all indirect taxes except duties on imports and exports. In a narrower meaning, it is a tax upon the *production* of commodities. Thus, distillers pay a tax of so much a gallon on the whisky they manufacture, and oil refiners have paid a similar tax.

The first case of indirect taxation, other than duties on imports, was that of a duty on spirits distilled within the United States, by an act of Congress, March 3d, 1791. The duty ranged from nine cents a gallon to twenty-five, according to its percentage below or above proof. On the stills employed, there was also a yearly duty of sixty cents for every gallon of their capacity. In 1794, duties were levied upon carriages, and retail dealers in wines, etc., were required to pay five dollars a year for license. A duty of eight cents a pound was also levied upon snuff manufactured in the United States, and one of two cents a pound on sugar refined. About the same time duties were laid on auction sales; and in 1797 stamp duties were imposed on certain certificates, letters patent, insurance policies, bills of exchange, promissory notes, etc., etc. Thus a system of internal revenue was brought into full operation during the last century, having been commenced very soon after the adoption of the Constitution.

In April, 1802, an "Act to repeal the Internal Taxes," swept away "the internal duties on stills and domestic distilled spirits, licenses to retailers, sales at auction, carriages for the conveyance of persons, and stamped vellum, parchment, and paper." But in 1813, these were restored, and the office of Commissioner of the Revenue was established, "for superintending the collection of the direct tax and internal duties." In 1815, the list of manufactured articles on which internal duties were levied was largely increased, and taxes imposed also upon household furniture and gold and silver watches.

All these taxes—they are called *duties* in the statutes of the United States—were required to be uniform by the Constitution. Thus, if upon a promissory note for a given sum a certain duty was levied in one State, the same duty must be paid upon a note of the same amount in every other State. If the owner of one gold watch was required to pay a tax of one dollar, every one owning a gold watch must pay a like sum. But direct taxes must be in proportion to the population of the State. If two States are equal in population, their citizens must pay to the general government the same aggregate amount of direct taxes, though the citizens of one State may possess twice as much property as those of the other.

The act of Congress of August 5th, 1861, which levied a direct tax on the States and Territories, provided, also, for an income tax, believed to be the first ever levied by our general government. The tax was three per cent per annum on the excess of income over eight hundred dollars. In July, 1862, it was changed to three per cent on the excess of income over six hundred dollars; but five per cent on the excess over ten thousand. For the years 1870 and 1871, it was two and a half per cent on the excess of income over two thousand dollars. No income tax has been levied since that for 1871. The amount collected on this tax in 1865, was $20,000,000; in 1866, $61,000,000; in 1867, $57,000,000; in 1868, $32,000,000.

On the first of July, 1862, an act to provide internal revenue was passed by Congress, which is by far the most elaborate and comprehensive scheme of internal taxation in the history of our government. It included duties on a great variety of manufactured articles, licenses for carrying on divers trades and occupations, duties on carriages, yachts, billiard tables, and plate; on banks, trust and insurance companies, railroads, steamboats, ferry-boats, railroad bonds, stamps, etc., etc.

The income to the government from internal revenue from 1791 to 1849 was about $22,000,000; ranging from about $200 in 1843, to $5,124,708 in 1816. During the same period the income from customs was about $946,000,000. But in the year 1866 the income from internal revenue was over $309,000,000, that from customs being about $179,000,000. For the year ending June 30, 1877, the receipts from customs were about $131,000,000, and those from internal revenue $118,000,000.

Clause 2.—*To borrow money on the credit of the United States.*

In time of peace, the ordinary revenues of a nation should be sufficient to pay the expenses of its government; but in time of war these will be insufficient, and debts must be incurred. All nations possess this power of borrowing money, and all have exercised it. The usual mode of making loans is to issue the bonds of the government, which are its promises to pay the sums specified, at a given time, and with interest at given rates, usually payable semi-annually. These bonds are then sold at the best rates the government can command.

The United States have issued bonds from time to time since the formation of the government; though these were in possession of the capitalists almost exclusively, until the war of the rebellion made large loans necessary. Then efforts were made to circulate them among the people, and with such success that multitudes purchased United States bonds who had never before seen securities of this character. The issues were of various denominations, $50, $100, $500, $1,000, and so on.

There have been three classes of loans which have been widely circulated among the people, viz., those known as *seven-thirties*, *ten-forties*, and *five-twenties*. The first were called treasury notes, and both principal and interest were payable in currency. The interest was at the rate of seven and thirty-hundredths per cent per annum, which gave them their name, seven-thirties. This rate gives the interest one cent a day on a note of $50, two cents on one of $100, etc., rendering it easy of computation. The five-twenties are payable, principal and interest, in coin, and the name, five-twenties, comes from the time of payment; the government may pay at any time after five years from their date, though they are not due till the expiration of twenty years. The interest is at the rate of six per cent per annum. The ten-forties may be paid, in like manner, after ten years, and are due at the end of forty years: interest five per cent per annum.

The bonds of the United States can not be taxed by the State governments, according to a decision of the Supreme Court, even if the bonds themselves contain no stipulation to that effect.

The public debt of the United States, on the first of January, 1791, was about $75,000,000. In 1816, it was over $127,000,000, which within about twenty years was entirely paid. In 1861, the debt was $90,000,000, and in 1866, it was $2,773,000,000. On the first of July, 1877, it was $2,060,000,000. The advantages of this method of distributing the payment of a debt over a period of years are obvious. The country is every year becoming richer, and thus more able to pay off its indebtedness. What would have been an insupportable burden at the creation of the debt, becomes, in the lapse of years, tolerable and easy. At the same time, the temptation to postpone unduly the payment of principal should be steadily resisted. The ordinary expenses of the government will always call for heavy taxes, without adding to them interest on debts.

The act of 1870, and subsequent acts, authorized the issue of bonds for $1,500,000,000 at five, four and a half, and four per cent interest, payable principal and interest in coin, and redeemable at the pleasure of the Government after ten, fifteen, and thirty years respectively; to be sold at not less than par, and the proceeds to be applied to redeem the five-twenties. Over $700,000,000 of six per cent bonds have already (January, 1878) been thus redeemed, reducing the annual interest over $8,500,000.

A portion of our present public debt is in the form of Treasury Notes, commonly called legal tenders, which are circulated as money, and on which the Government pays no interest. The power to issue these comes from this clause (to borrow money) but it will be more convenient to consider them under another clause.

Clause 3.—*To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.*

Prior to the adoption of the Constitution the power to regulate commerce was not in Congress, but in the several States. Each State made such regulations as its own interests seemed to require, without regard to the influence upon its neighbors. "The States through whose ports the natural or artificial channels of trade principally passed, were able to exact a revenue from those which were less favorably situated for commercial purposes." It was on account of the difficulties and irritations growing out of these commercial regulations that a Convention of Commissioners from various States was held at Annapolis in September, 1786; which Convention recommended the one that framed the present Constitution in the year 1787.

As appears from this third clause, the whole control of the subject of commerce, both with foreign nations, among the several States, and with the Indian tribes, is placed by the Constitution not with the States but with the general government. Under the Articles of Confederation each State levied duties on imports and exports as it pleased, and this, not only as regarded foreign countries, but with reference to commerce between contiguous States. But now there can be no restrictions on trade between two States, and all duties on goods imported from other countries must be "uniform." The nation has the exclusive power over commerce, and without this it would hardly deserve the name of a nation.

"To regulate" commerce is to prescribe rules by which it is to be carried on. "With foreign nations" means with the people of those nations. The general government, and not the States, prescribes the rules of commercial intercourse between the people of the United States and those of foreign countries, and between the people of any one State and those of all the other States. So also trade with the Indian tribes is under the exclusive control of Congress.

"In the practice of the government, the commercial power has been applied to embargoes, non-intercourse, non-importation, coasting-trade, fisheries, navigation, seamen, privileges of American and foreign ships, quarantine, pilotage, wrecks, light-houses, buoys, beacons; obstructions in bays, sounds, rivers, and creeks; inroads of the oceans, and many other kindred subjects; and, doubtless, includes salvage, policies of insurance, bills of exchange, and all maritime contracts, and the designation of ports of entry and delivery.

"Wherever the power of Congress extends, they are the exclusive judges of the proper reasons and motives for exercising it, and are not to be controlled by any allegation that it was done for a purpose not contemplated in the original grant. This commercial power has been employed for the purposes of prohibition, reciprocity, retaliation, and revenue — sometimes, also, to encourage domestic navigation and manufactures, by bounties, discriminating duties, and special privileges and preferences, and to regulate intercourse, with a view to mere political objects; and the right to do so has been sustained by the unequivocal voice of the nation."[1]

In December, 1807, under the administration of Mr. Jefferson, an embargo act was passed. It provided "That an embargo be laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; and that no clearance be furnished to any ship or vessel bound to such foreign port or place, except vessels under the immediate direction of the President of the United States."[2]

Under the power "to regulate commerce," Congress thus passed a law prohibiting every American merchant vessel from leaving port; and this, not for a limited period, but without limitation of time. It was repealed, however, in March, 1809, the act going into effect in June of the same year. An act to prohibit the importation of certain goods from Great Britain and her colonies was passed in April, 1806; and one to interdict the commercial intercourse between the United States and Great Britain and France was passed in March, 1809.

For the fiscal year ending June 30th, 1877, the total value of exports was $602,475,220, and of imports $451,323,126.

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[1] Farrar, p. 328. [2] U. S. Statutes, II, p. 451.

The power to regulate commerce with the Indian tribes is given to Congress. The exclusive right of pre-emption to the Indian lands is with Congress, and neither States nor individuals can purchase lands from the Indians. An Indian tribe is not a foreign nation, but a people in a condition of dependence or pupilage, sustaining to the United States the relation of a ward to a guardian.

Clause 4.—*To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.*

Naturalization is the conferring of citizenship. By it an alien, or foreigner, is made a citizen. Neither the Constitution nor any act of Congress defines citizenship. The Fourteenth Amendment declares who are citizens, but gives no definition of the term. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the States wherein they reside." "Citizens, under our Constitution and laws, means free inhabitants born within the United States, or naturalized under the laws of Congress." (Kent.) "A citizen is a member of the body politic, bound to allegiance on the one side, and entitled to protection on the other." (Attorney-General Bates.)

Citizens are either native-born, or naturalized. Every person born in the country is, at the moment of birth, *prima facie* a citizen. An alien can become a citizen only by compliance with the rule of naturalization prescribed by Congress.

On the twenty-fourth day of June, 1776, the Continental Congress resolved, "That all persons abiding in any of the United Colonies, and deriving protection from the laws of the same, owe allegiance to the said laws, and are members of such Colony." This resolution was passed after the Resolution of Independence had been decided upon in Committee of the Whole. This is supposed to have been the law until March, 1781, when the Articles of Confederation went into effect, in which jurisdiction over the subject was left to the individual States. The objections to giving each State the power to frame naturalization laws for itself are obvious. One State might confer the rights of citizenship after a residence of one year, another after two years, and another after ten; yet the Constitution provides that, "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." There was no difference of opinion in the Convention as to the propriety of giving to Congress the exclusive control of the matter.

In 1790, Congress passed an act requiring two years' residence before a foreigner could become a citizen. In 1795, the time was extended to five years, and in 1798, it was extended to fourteen years. But in 1802, it was reduced to five years, which is the time now required.

The mode of naturalization requires, first, that the alien shall make, at least two years before his admission—it was three years by the act of 1802, but changed to two in 1824—a declaration, on oath, of his purpose to become a citizen of the United States, and to renounce all allegiance to any foreign prince or state; secondly, that when he applies for admission he shall declare, on oath, that he will support the Constitution of the United States, and doth renounce all allegiance to any foreign prince or state; thirdly, that the court admitting him shall be satisfied that he has resided five years within the United States, and one year in the State or Territory where the court is held, and that he has behaved as a man of good moral character.

The children of persons duly naturalized, who were under twenty-one at the date of such naturalization, shall be considered citizens, if residing in the United States.

An alien, coming to this country when a minor, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one, and who shall have continued to reside therein to the time of his application, may, after he arrives at the age of twenty-one, and after he shall have resided five years, in the United States, be admitted a citizen without the previous declaration. A woman who might lawfully be naturalized under the existing laws, married to a citizen, shall be deemed a citizen.[1]

The children of citizens of the United States shall be considered citizens, though born abroad.

If an alien who has made his declaration of intention to become a citizen die before he is actually naturalized, his widow and children shall be considered as citizens upon taking the oaths prescribed by law.

No alien, who shall be a native citizen or subject of any country with which the United States shall be at war at the time of his application, shall be then admitted to citizenship.

By act of July 17th, 1862, a soldier of the age of twenty-one years and upward, regularly discharged from the army of the United States, may be admitted to citizenship without a previous declaration of intention, and with a single year's residence.

The admission to citizenship of those who have been subjects of other governments, implies the right of expatriation. This right has been denied by some of the European states, and the claim maintained that American naturalized citizens still owe allegiance to the countries where they formerly resided. In July, 1868, an act of Congress was passed, expressly declaring the right of expatriation, and that "All naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this government, the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances."

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[1] U. S. Statutes, X, 604.

Within a few years treaties have been made by the United States with a number of other nations, in which provision is made for the mutual naturalization of citizens, thus recognizing the right of expatriation. A treaty of this kind was made with Prussia and Bavaria in 1868, with Belgium and Hesse in 1869, with Great Britain and Wurtemburg and Baden in 1870, with Austria in 1871, and with Sweden and Norway in 1872.

Though the Constitution gives to Congress the whole control of the subject of naturalization, with no limitation as to those who might be admitted to citizenship, every law enacted, from 1790 to 1870, restricted it to whites. By act of July 14th, 1870, it was provided: "That the naturalization laws are hereby extended to aliens of African nativity, and to persons of African descent." As the original statute limited naturalization to white aliens, and the act of 1870 extended it to those of African descent, the question has arisen whether the Chinese may be naturalized under the present law. In April, 1878, Judge Sawyer of the United States Circuit Court decided this adversely, holding that Chinamen are not "white" in the meaning of the statute.

Mr. Curtis, in his History of the Constitution, says, "the power that was given, by unanimous consent, over the subject of naturalization, shows the strong purpose that was entertained of vesting in the national authority an efficient practical control over the States, in respect to the political rights to be conceded to persons not natives of the country." In a note he says: "I have called the naturalization power a *practical* control upon the States in the matter of suffrage. It is indirect, but it is effectual; for I believe that no State has ever gone so far as, by express statutory or constitutional provision, to admit to the right of voting persons of foreign birth who are not naturalized citizens of the United States."[1] Mr. Curtis is, doubtless, right in his opinion that an alien ought not to be allowed to vote; but he is wrong in the statement that no State has extended the right of voting to persons of foreign birth not naturalized. In a number of the States this right is enjoyed, as in Indiana, Michigan, and Wisconsin. The Constitution of Indiana permits an alien to vote who has been one year in the United States and six months in Indiana, and who has declared his purpose to become a citizen of the United States. The new Constitution of Illinois restricts suffrage to citizens of the United States.

By the common law, an alien could not hold real estate; and in some of the States a special act of the legislature is necessary to enable an alien to hold such property. But other States have provided by statute that no difference in this respect shall exist between an alien and a citizen.

Naturalization removes the disabilities of alienage, and confers, with one or two exceptions, all the rights and privileges pertaining to the native-born citizen. A naturalized citizen can not hold the office of President or Vice-President of the United States, nor can he be a Representative or Senator in Congress till he has been a citizen for a term of years.

While this clause of the Constitution authorizes Congress to "establish a uniform rule of naturalization," and such a rule has been established, Congress has exercised the power of granting naturalization without regard to the rule. Foreign territory has repeatedly been incorporated into the Union by treaty and otherwise, and the inhabitants, of whatever race or description, clothed with the rights of citizenship. The President and Senate have thus naturalized whole communities, without reference to the sections of the act prescribing the mode of naturalization. So Texas, with all its people, was admitted into the Union by joint resolution of Congress. As the general government has thus naturalized whole masses of people without any specific authority, the grant to establish a uniform rule has not been considered as exhausting the power of Congress over the subject.

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[1] History of the Constitution, II, p. 202.

In 1870, Congress passed a stringent law to punish crimes against the naturalization laws. Great frauds had been committed in some of the cities in the issue of naturalization papers, thus leading to the casting of many fraudulent votes.

Bankruptcy. — According to English usage, the term *bankrupt* was limited to traders who could not or would not pay their debts, while the word *insolvent* was applied to persons not engaged in trade. This distinction was recognized in the first law passed by Congress on the subject, April 4th, 1800. It refers to "merchants, bankers, brokers, underwriters," etc. But the law of August 19th, 1841, makes no such limitations, but refers to "all persons owing debts." The same is true of the recent law, passed March 2d, 1867. Its language is, "If any person owing debts," etc.

The popular usage in the United States makes the words *bankrupt* and *insolvent* synonymous, and applies them to persons not engaged in trade as well as to traders. Strictly, a person is insolvent who is not able to pay his debts. He becomes a bankrupt when, on his own petition, or the petition of one or more of his creditors, he is declared to be such by the proper law officer, called a Register in Bankruptcy. Insolvency thus naturally precedes bankruptcy. A man seeks to avail himself of the bankrupt act because he is insolvent, and many are insolvent who are never adjudged bankrupts.

The Constitution gives to Congress the power to pass uniform laws on the subject. Prior to the adoption of the Constitution the power was exercised by the several States. Three bankrupt laws have been enacted by Congress: the first, April 4th, 1800, repealed December 19th, 1803; the second, August 19th, 1841, repealed March 3d, 1843; the third, March 2d, 1867, and repealed in April, 1878, to take effect September 1st. Thus bankrupt laws have been in force only sixteen years in about ninety.

Some of the States have had laws in regard to insolvency, which have been for the relief of unfortunate debtors. It has been held that the States might pass laws on the subject, provided they did not contravene the Constitution of the United States, or the provisions of any law of Congress in force at the time. A State might thus pass laws releasing the person of the debtor from imprisonment; or releasing property which he might acquire from debts which he should contract after the passage of the law. But a State could not release a debtor from debts already incurred, nor could it pass laws affecting the citizens of other States. Congress, however, is subject to no such limitation. While the Constitution prohibits States from passing laws which impair the obligation of contracts, there is no such prohibition on Congress.

It has been said that a bankrupt law is intended primarily as a remedy for the benefit of creditors; while an insolvent law is for the benefit of the debtors. The word *bankrupt* formerly carried with it the sense of an offender. Thus the law of 1800 refers only to involuntary bankruptcy; the creditors petitioning that the debtor may be declared a bankrupt, and his property be divided among his creditors. The idea of fraud on the debtor's part is implied in the wording of the statute, and, as before said, that law applies only to traders.

The law of 1841 provides for voluntary as well as involuntary bankruptcy, and the provisions are applicable to any person owing debts which he is unable to pay. The same is true of the recent law. Most of its provisions refer to voluntary bankruptcy.

In all the laws an allowance is made to the debtor who is adjudged a bankrupt. In the law of 1800 the amount depended upon the proportion of his debts which he was able to pay. If this was less than fifty per cent, the allowance could not exceed three hundred dollars and wearing apparel. If fifty per cent of his debts could be paid, he was allowed five per cent, but the allowance could not exceed five hundred dollars. If seventy-five per cent of debts was paid, he was allowed ten per cent, provided the allowance did not exceed eight hundred dollars. The law of 1841 exempted furniture and other necessary articles not to exceed three hundred dollars, also the wearing apparel of the bankrupt and his family. The law of 1867 makes the limit five hundred dollars, and such other property as may be exempted from sale or execution by the laws of the State or of the United States.

The bankrupt, after the various requirements of the law have been complied with, receives a "discharge" from his debts. The three laws differ somewhat as to the influence which the creditors may exert to prevent this discharge of the bankrupt from his debts.

The law of 1800 required that two-thirds of the creditors — including both the number of the creditors and the value of their claims — should give their assent. The law of 1841 provided that a discharge should be given unless a majority of the creditors in number and value should dissent therefrom in writing. That of 1867 provided that "no discharge shall be granted to a debtor whose assets shall not be equal to fifty per cent of the claims proved against his estate upon which he shall be liable as the principal debtor, unless the assent in writing of a majority in number and value of his creditors" be given. It provides also that any creditor opposing the discharge may present to the court the grounds of his opposition, but the court shall decide.

It is to be feared that debtors, in our country, are released too easily from their obligations. "In England, bankruptcy is a more serious matter. The bankrupt not only loses credit; he also, to a great extent, loses caste. * * In France, the lot of the bankrupt is still more severe; not only does he lose his social position, but the law prevents him from engaging in any other business on his own account till he has redeemed his outstanding obligations."[1]

But even the English laws are far too lenient, according to the opinion of an eminent writer. "It is seldom difficult for a dishonest debtor, by an understanding with one or more of his creditors, or by means of pretended creditors set up for the purpose, to abstract a part, perhaps the greatest part, of his assets from the general fund through the forms of the law itself. * * * To have been trusted with money or money's worth, and to have lost or spent it, is *prima facie* evidence of something wrong, and it is not for the creditor to prove, which he can not do in one case out of ten, that there has been criminality, but for the debtor to rebut the presumption by laying open the whole state of his affairs, and showing either that there has been no misconduct, or that the misconduct has been of an excusable kind."[2]

The distinction between a legal obligation and a moral one must not be overlooked. The law may discharge the bankrupt from his debts, but there still rests upon him the moral obligation to satisfy the claims of his creditors. The legal discharge puts him in a position to accumulate again, and thus furnishes him the opportunity to provide the means with which to pay his debts. Some make this right use of the advantage which the law gives them, but many regard the legal discharge from their debts as a release also from their moral obligations. Bankruptcy is a test, though a severe one, of a man's real character.

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[1] Bowen's American Political Economy, p. 211.

[2] Mill's Political Economy, II, pp. 473, 476.

Clause 5.—*To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures.*

All civilized nations use gold and silver for money. To coin money is to mold the metal into the required form, and to give to it the stamp of the government. The power to coin money is an attribute of sovereignty, and is therefore properly placed with the general government. Without doubt, Congress would have possessed the power had the Constitution contained no specific grant to this effect. A subsequent section prohibits the States from coining money.

Under the Articles of Confederation the power of coining money was possessed by the States and Congress jointly, though Congress had the "sole and exclusive right and power of regulating the value of coin struck by their own authority, or by that of the respective States."

By act of April 2d, 1792, Congress made provision for issuing money by the establishment of the Mint. This was located at Philadelphia, where Congress held its sessions till 1800, and it has never been removed from that city. Branch Mints have been established at New Orleans; Charlotte, N. C.; Dahlonega, Ga.; San Francisco, Cal.; Carson City, Nevada; and Dallas City, Oregon. Assay offices have been established at New York, and at Boise City, Idaho. By act of February 12th, 1873, *Mints* are established at Philadelphia, San Francisco, Carson, and Denver; *Assay Offices* at New York; Boise City, Idaho; and Charlotte, N. C.

The coinage act of 1792 made our system bi-metallic; both gold and silver coins were made real money. The *gold* coins were three: the eagle (of the value of ten dollars), the half-eagle, and the quarter-eagle. The *silver* coins were five: the dollar, the half-dollar, the quarter, the dime (written "disme" in the statute), and the half-dime. All these were legal tender in payment of all debts. There were also two *copper* coins which were subsidiary, or token, money: the cent and the half-cent.

The coins both of gold and silver have a small fraction of alloy, and the alloyed metal is called *standard* gold or silver. The weight of the coin is thus expressed in the standard metal, while its value depends entirely upon the amount of pure metal which it contains. In the gold coins made under the act of 1792, there were 27 grains of standard, and 24.75 of pure, gold to the dollar; and in the silver coins, 416 grains of standard, and 371.25 grains of pure, silver. Gold was thus estimated to be worth fifteen times the same weight of silver.

In 1834 an ounce of gold had become worth considerably more than fifteen ounces of silver, and as a consequence the gold coins were melted up and sold as metal. In order to retain both metals in circulation as money, it was necessary either to reduce in weight the gold coins, or to increase the silver. A little reflection will show that in such cases the metal which is undervalued must always be reduced; the one that is overvalued being really the standard. A reduction of something more than six per cent was accordingly made in the weight of the gold coins. In 1837 the alloy of both metals was fixed at one-tenth; making, with the change of 1834, the dollar to contain 25.8 grains of standard, and 23.22 grains of pure, gold, or 412.5 grains of standard, and 371.25 grains of pure, silver. This reduction in the gold coins changed the ratio of gold to silver from fifteen to one to sixteen to one.

But presently the equilibrium was again disturbed, silver having become worth more than the one-sixteenth part of gold. This was owing, in part at least, to the increased production of gold in the Australian and Californian mines. If both silver and gold are to be retained as full legal tender, the silver coins must be reduced in weight as those of gold were in 1834. There was another method, however—to give up the bi-metallic system; to make gold alone the legal standard, and have the silver coins subsidiary. This was what the government determined upon; and in 1851 the Secretary of the Treasury recommended that the silver coins be reduced in weight, and be made legal tender for small sums only.

A bill was accordingly prepared which became a law February 21, 1853, providing that two half-dollars, four quarters, etc., should contain 384 grains of standard silver, instead of 412.5; and that these coins should be a legal tender for only five dollars. The silver dollar was not mentioned in the act, and so remained as a nominal coin, but it formed from that time no part of the circulating money of the country. In this great monetary change the United States followed the example of England, where gold was adopted as the only standard in 1816, silver being a legal tender for only forty shillings.

Silver was thus practically demonetized in 1853, and from that time was used only as change or token money. In 1873 a general coinage act was passed, which prohibited the coining of all coins except those enumerated in the act. As the silver dollar was not named in the list, this legislation completed the demonetization of silver, and declared that the gold dollar "shall be the unit of value."

From 1792 to 1875 the ratio of the metallic values of gold and silver had ranged between fifteen and sixteen to one. But in the latter year silver began to decline in value, so that in July, 1876, the silver in the old dollar of 412.5 grains was worth only 79¼ cents. There were also great fluctuations in its value, the variation amounting to twenty-five per cent within a period of five months. About this time the question of recoining the silver dollar, and making it again a full legal tender, began to be agitated, and by the act of February 28, 1878, it was finally done. The bill was vetoed by President Hayes, but was subsequently passed by the requisite majority in each House. The act provided for a monetary convention of representatives from different nations to agree, if possible, upon a ratio of value between silver and gold. Such an agreement among the leading nations might perhaps make feasible the concurrent use of both gold and silver as full money; without it, one metal would probably soon drive the other out of circulation.

Besides gold and silver coins, we have five-cent and three-cent pieces made of copper and nickel, and two-cent and one-cent pieces of copper. The tendency of the government to overvalue the cheap coins used for change, is shown in the fact that the cent issued under the acts of 1864 and 1873 contains less than 46 grains of copper, while that of 1792 contained 264 grains.

The coinage act of 1873 provides for the following coins: Gold — the dollar piece; the quarter-eagle, or two-and-a-half-dollar piece; the three-dollar piece; the half-eagle, or five-dollar piece; the eagle, or ten-dollar piece; and the double-eagle, or twenty-dollar piece. The silver coins are a trade-dollar; a half-dollar, or fifty-cent piece; a quarter-dollar, or twenty-five-cent piece; a dime, or ten-cent piece. The "minor coins" are a five-cent piece, a three-cent piece, and a one-cent piece.

The gold dollar was made the unit of value; the standard weight is 25.8 grains, and the weight of pure gold is 23.22 grains, the alloy being one-tenth. The gold coins are a legal tender for all sums.

To the silver coins provided for by the act of 1873 we must add the dollar of 412.5 grains. There are thus three distinct classes of silver coins: (*a*) the trade-dollar, (*b*) the dollar, and (*c*) the subsidiary coins—half-dollars and smaller pieces. The trade-dollar was not intended for circulation at home, but for trade with Japan and other Eastern nations. It weighs 420 grains of standard silver. It is a *coin*, but not *money;* not even token money, as since July, 1876, it has not been a legal tender for any sum. The dollar is money proper, legally on an equality with gold. The smaller silver coins are token money, a legal tender for five dollars only. They were slightly increased in weight in 1873, and now weigh 385.8 grains, or 25 grammes to the dollar.

Formerly the government made no charge for coining money, but any person might bring gold and silver bullion and have it coined free of expense. If, however, he preferred to take the value in coins at once, one-half of one per cent was deducted. Subsequently, the law provided that the cost of preparing the metal for coining should be defrayed by the person to whom the bullion belonged. In 1853 there was a *seignorage*, or charge for coining, of one-half of one per cent; in 1873, it was made one-fifth; and in 1875 it was wholly removed. But while there is free coinage of gold, silver is coined only for the government, as silver coins are largely overvalued; but standard silver is converted into trade-dollars, or into bars, at cost.

The decimal system for our coinage was recommended in a report of the Financier, January, 1782. In July, 1785, Congress resolved that the money unit of the United States be one dollar, and that the decimal system be followed. In August, 1786, they provided for the issue of two gold coins, the eagle and the half-eagle; of four silver coins, the dollar, the half-dollar, the double-dime, and the dime; and of two copper coins, the cent and the half-cent.

Though the dollar was made the unit of the money system in 1785, the accounts had been kept in dollars for more than ten years.

Foreign Coin.—Congress has repeatedly regulated the value of foreign coin; that is, has established the rates at which it should be received at the Custom-house for duties on goods, or in payment for the public lands. The sovereign, or pound sterling of Great Britain, is taken at \$4.86$\frac{65}{100}$, and this is to be the par of exchange between the two countries, instead of \$4.44$\frac{4}{9}$. For most of the time the coin of some foreign countries has been a lawful tender for debts and payments; but in 1857 all laws of this kind were repealed, and none have been enacted since.

Under Clause 2 of the present section, which authorizes Congress to borrow money, we have spoken of the issue of Treasury Notes. These have been issued repeatedly by the general government, the notes being of various denominations, generally redeemable in a year or other short period, though sometimes with the time of redemption left indefinite. Generally they have borne interest, but not always. They were receivable by the United States for all taxes and duties, and for public lands, and were paid out to such creditors of the government as were willing to receive them at par. In most cases they were made payable to order and were transferable by delivery and indorsement, though some were made payable to bearer, and were transferable by delivery. In 1862, and the years immediately subsequent, they were made legal tender for all debts, public and private, except interest on the bonded debt of the United States, and duties on imports.

These Treasury notes are what the Constitution calls "bills of credit." The States are forbidden to "emit bills of credit," as well as to "coin money," and to "make any thing but gold and silver coin a tender in payment of debts." The Constitution places the coining of money among the powers of Congress, but says nothing in regard to their issuing bills of credit, and nothing as to their making even gold and silver a legal tender. In the draft of the Constitution, as reported by the Committee of Detail, Congress was authorized to "coin money and emit bills on the credit of the United States." But the latter clause was stricken out. A suggestion was made in the Convention to prohibit the making of such bills a legal tender, but no motion to that effect was made.

The Constitution, therefore, does not confer upon Congress in specific terms the authority to emit bills of credit, or to make them, if issued, legal tender; nor does it prohibit the exercise of such authority. As we have seen, the government has assumed it as one of the powers of sovereignty.

The question whether such notes, made by Congress legal tender in payment of debts, could be used to pay debts contracted prior to the passage of the law, has been twice before the Supreme Court. In the first case the decision was adverse to such payment; but, subsequently, it was decided in favor of it. There can be no doubt that this second decision accords with the general theory and practice of the people from the time the law was passed until the time of the first decision. During this period of some eight years, debtors tendered and creditors received these government notes in payment of debts without protest or unwillingness.

This second decision covers the whole ground, and establishes the right of the government to issue bills of credit, and to make them a lawful tender for all debts, as well past as future. At the same time it is clear that this right is one which should be exercised with the greatest caution, and only in times of extreme exigency.

Some writers make no difference between coining money and issuing Treasury notes; holding that a legal tender note is as truly money, and coined money, as a silver dollar or a gold eagle. "The government paper now, 1866, forming, almost exclusively, the currency of the country, is the money of the country. It makes no pretension to being a substitute or a representative. All substitutes for money are redeemable in that; and that is redeemable in nothing, so long as it constitutes money and is itself a legal tender for all the purposes of money."[1] So Mr. Tiffany holds that the value of money arises from the government stamp. The article stamped may be gold, silver, or any thing else. "Whether the coin shall be metal, leather, parchment, paper, or any other substance, is a question of expediency."[2]

It seems to be much simpler as well as truer to say, that the present government paper, circulating as money, is a government loan — a forced loan. Every note is a promise to pay by the government. It is a note like a note of hand drawn by a private citizen, or a note issued by a bank. The difference is, that a bank-note is a promise to pay on demand, and the promissory note of an individual is a promise to pay at some specified time, while on the government note the time is indefinite. A gold eagle has upon it the stamp of the United States, which is a guaranty that it contains so many grains of gold. It bears its value upon its face — ten dollars. But a legal tender note does not purport *to be* ten dollars; it is a mere certificate of indebtedness for that amount on the part of the government to the holder of the note. "The United States will pay the bearer ten dollars." If this piece of paper were itself ten dollars, there would be no subsequent transaction requisite between the holder and the government. As between man and man it is given and taken as in full satisfaction of debt; but he who receives it holds it as a valid debt against the United States. When the government pays gold to its creditor, the debt is paid. When it pays him legal tender notes, it gives him a certificate of indebtedness which he may transfer to another. If the Treasury notes in the hands of the people are veritable money, as truly so as gold, then the United States is not indebted to those who hold them any more than it is to those who have gold eagles in their possession; and the Treasury Department should not report these Treasury notes as a part of the national debt.

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[1] Farrar's Manual of the Constitution, p. 339.

[2] Tiffany's Treatise on Government, p. 223.

In authorizing Congress to "borrow money" as well as "coin money and regulate the value thereof," and in prohibiting the States from coining money and emitting bills of credit, the Constitution places in Congress the control of the whole subject of money; not only of gold and silver coin, but of all substitutes for them. This control, however, so far as it relates to the bank-note currency of the country, Congress has not chosen to exercise, except partially, until within a few years. A bank of the United States was chartered February 25th, 1791, as a fiscal agent of the government, with a capital of ten millions, and to continue twenty years. On the tenth of April, 1816, another was chartered, with a capital of thirty-five millions, to continue for the same period. Congress refused to re-charter the first, and President Jackson vetoed the bill to renew the charter of the second. In 1841, two bills in succession were passed to establish a United States bank, but both were vetoed by President Tyler. Congress also authorized the establishment of banks in the District of Columbia.

With these exceptions the charters of the banks of the country have been granted by the several State legislatures. So familiar had the people become with the currency furnished by these State banks, that when Congress passed, February 25th, 1863, the act to establish National banks, many supposed that the general government was usurping an authority which belonged to the States. On the contrary, we are forced to inquire, where did the States obtain the power to charter banks, and thus provide the paper circulation of the country? "Is not the right," says Mr. Webster, "of issuing paper intended for circulation in the place, and as the representative, of metallic currency, derived merely from the power of coining and regulating the metallic currency? Could Congress, if it did not possess the power of coining money and regulating the value of foreign coins, create a bank with power to circulate bills? It would be difficult to make it out. Where, then, do the States, to whom all control over metallic currency is altogether prohibited, obtain this power?"[1]

The States have established banks because Congress tacitly left it to them in great measure. The authority was in the general government; but, as Congress did not choose to exercise it, the State legislatures went forward in this work till such time as the general government should see fit to provide a bank-note currency for the whole people.

The act of June 3d, 1864, a substitute for that of February 25th, 1863, provided for a Bureau of Currency in the Treasury Department, at the head of which is a Comptroller. Banking associations may be formed with power to issue bills, receive deposits, loan money, and perform the ordinary functions of banks. By an act of March, 1865, amended July 13th, 1866, a tax of ten per cent was levied on the notes of State banks used for circulation after August 1st, 1866. This, of course, excluded these notes from circulation, and the present bank currency of the country consists of the notes of National banks.

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[1] Tiffany, p. 227; Story, II, 56.

This circulation was at first limited to three hundred and fifty-four millions, and was distributed among the States and Territories according to wealth and population jointly; but both these provisions have been repealed. It is secured by a deposit of United States bonds in the treasury of the United States. The circulation of a bank can not exceed ninety per cent of the amount of bonds deposited; ranging from sixty per cent when the capital is three millions and over, to ninety per cent when not over half a million.

The advantages of this national currency are, that the payment of the notes is guarantied by the United States, that a uniform currency is provided, and that the notes are receivable for all dues to the United States except duties on imports.

Much effort has been made to secure an international coinage. As the pound sterling contains 113 grains of gold, and the American half-eagle 116.1, if the latter were reduced 3.1 grains in weight, or about thirteen cents in value, the two coins would be equal in value. This would make four shillings equivalent to one dollar. So if the twenty-five-franc piece were increased about four cents, it would equal the pound sterling. These slight changes would secure uniformity in the gold coins of England, France, and the United States.

Weights and Measures.—There is propriety in connecting weights and measures with money. By money we express the prices, or relative values, of all commodities, and by weights and measures we ascertain the quantities of commodities. As we need uniformity in money, so we need it in all measures of quantity; and, therefore, both subjects were committed to Congress.

The importance of uniformity was urged by President Washington in his message to the first Congress; and various reports on the subject have been presented at different times. A very elaborate one was prepared by John Quincy Adams when Secretary of State, in 1821, but the recommendations were never embodied in a statute.

By an act of Congress, May 19th, 1828, the brass troy pound weight, procured by the minister of the United States at London, was made the standard troy pound of the Mint of the United States. A series of standard weights corresponding to this was ordered to be made, from the hundredth part of a grain to twenty-five pounds. In 1836 the Secretary of the Treasury was directed to cause a complete set of weights and measures adopted as standards to be delivered to the governor of each State that a uniform standard might be established throughout the United States.

The Metric System was legalized by act of Congress in July, 1866; and in 1873, and again in 1876, appropriations were made for procuring metric standards for the States, and for the construction and verification of standard weights and measures for the custom houses and for the several States.

This is a decimal system, and its unit is a *meter*, which is equal to 39.37 inches. Its multiples are, the *dekameter* (10 meters), the *hectometer* (100 meters), the *kilometer* (1,000 meters), and the *myriameter* (10,000 meters). The subdivisions are, the *decimeter* ($\frac{1}{10}$ of a meter), the *centimeter* ($\frac{1}{100}$ of a meter), and the *millimeter* ($\frac{1}{1000}$ of a meter).

The unit of the measures of surface is the *centare*, which equals one square meter. The others are the *are* (100 square meters), and the *hectare* (10,000 square meters).

Of measures of capacity the *liter* is the unit, which equals one cubic decimeter. Its equivalents are 0.908 quarts in dry, and 1.0567 in liquid measure. The other denominations are formed like those in measures of length — the *dekaliter*, *hectoliter*, and *kiloliter;* and the *deciliter*, *centiliter*, and *milliliter*.

The unit of the measures of weight is the *gram*, which is the weight of one cubic centimeter of water at its maximum density, and is the equivalent of 15.432 grains avoirdupois. Then we have, as before, the multiples, *dekagram*, *hectogram*, *kilogram*, *myriagram*, *quintal*, and *millier* or *tonneau* (2204.6 pounds); and the subdivisions, *decigram*, *centigram*, and *milligram*.

The legalizing of this metric system is a step towards international uniformity. The advantages of the use of the same weights and measures by all civilized nations, and of the same gold and silver coins, are many and obvious; but it will be exceedingly difficult to change, in these respects, the habits of nations fixed by long usage.

By act of July 27th, 1866, the Postmaster-General was required to furnish post-offices exchanging mails with foreign countries postal balances, denominated in grams of the metric system; and, until otherwise provided by law, one-half ounce avoirdupois was to be taken as 15 grams (15 grams being equal to .529 oz).

Clause 6. *To provide for the punishment of counterfeiting the securities and current coin of the United States.*

The right to punish counterfeiting would follow from the right to coin money. By "securities" are meant all certificates of indebtedness, such as bonds, Treasury notes, etc. The word stock, or stocks, is often used to denote a debt due by a government on which it pays interest. Thus we say that a person holds ten thousand dollars of United States securities, or twenty thousand dollars of Ohio stock.

The general government punishes the making and also the passing of counterfeit money or securities. It is held that the States may also punish the passing of counterfeits on United States coin or securities.

Congress has passed laws punishing the making, forging, or counterfeiting, and the passing, uttering, or publishing, of the coin of the country, the notes of the United States bank, the Treasury notes, the fractional currency, the notes of the National banks, the excise stamps used for internal revenue, letters patent, postage stamps, stamped envelopes, and custom-house certificates.

The law now in force relating to counterfeiting the coin of the United States was passed in February, 1873. It provides that if any person, except as now authorized by law, shall make, or cause to be made, or shall utter or pass, or attempt to utter or pass, any coins of gold or silver, whether in the semblance of the coins of the United States or of foreign countries, every person so offending shall be punished by fine not exceeding five thousand dollars, and by imprisonment for a term not exceeding ten years. The penalty for counterfeiting the "minor coins" is a fine not exceeding one thousand dollars, and imprisonment not exceeding three years.

The law of June 30th, 1864, provides that if any person shall falsely make, counterfeit, or alter, or shall pass, utter, or publish any obligation or security of the United States, etc., he shall, on conviction, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement at hard labor not exceeding fifteen years. The act also provides that the words "obligation or other security of the United States" shall be held to include "all bonds, coupons, national currency, United States notes, Treasury notes, fractional notes, checks for money of authorized officers of the United States, certificates of indebtedness, certificates of deposit, stamps, and other representatives of value, of whatever denomination, which have been or may be issued under any act of Congress."

Clause 7.—*To establish post-offices and post-roads.*

A Post-office Department was established before the Declaration of Independence. In July, 1775, the Continental Congress made provision for such a department, and Dr. Benjamin Franklin was placed at the head of it, with the title of "Postmaster-General of the United Colonies." The Articles of Confederation gave Congress "the sole and exclusive right and power of establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office."

"By the authority of two short words, 'establish post-offices,' the government have instituted an establishment employing more men, controlling more patronage, and collecting and disbursing more revenue, than sufficed, within a few years past, for the administration of the whole government."[1] In 1790, there were seventy-five post-offices in the United States, and the expenditure for that year was $32,140. In 1876, there were 36,383 post-offices, the mails were transported 136,269,708 miles, and the expenditures were $32,796,186. The expenditures exceed the receipts by more than $4,000,000.

The Post-office Department is under a Postmaster-General, and three Assistant Postmasters-General. Postmasters whose compensation is less than one thousand dollars, are appointed by the Postmaster-General, and may be removed by him. In all other cases the appointment, which is four years, is made by nomination of the President and confirmation by the Senate. This class, which numbers less than two thousand, are paid salaries. The others receive the rents from boxes, and a percentage on the sale of stamps and other office receipts. Prior to 1864 all the postmasters received their compensation in this way. Except in the city of New York, where the salary is $8,000, no postmaster receives over $4,000 a year. The salary is not expected to exceed one-half of the gross revenue of the office. The amount paid for the transportation of the mail is nearly three times that paid to the postmasters. In a few instances the income of the Post-office Department has equaled or exceeded the expenditures. As the population of the country becomes more dense, the relative cost of transporting the mails may be expected to diminish.

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[1] Farrar, p. 346.

Mailable matter is divided into three classes, namely: first, letters; second, regular printed matter; third, miscellaneous matter. (1) Postage on letters not exceeding a half-ounce in weight is three cents. (2) On newspapers and other periodicals sent regularly once a week or oftener, the postage is two cents a pound prepaid. The matter is weighed in bulk. If sent less frequently than once a week, the postage is three cents a pound. Newspapers are carried free to subscribers in the county in which they are published. (3) Mailable matter of the third class is divided into two classes. (*a*) On books, catalogues, pamphlets, transient newspapers, and periodicals, etc., the postage is one cent for two ounces or less. (*b*) On blank books, book manuscript, and merchandise the postage is one cent for each ounce. Of third class mailable matter no package may exceed four pounds in weight. Less than one-tenth of the mailable matter in weight belongs to the first class.

Letter postage is now three cents for any distance within the United States. Formerly the rates were much higher, and were different for different distances.

From 1792 to 1799 there were nine rates, ranging from six cents for thirty miles and less, to twenty-five cents for a distance over four hundred and fifty miles. From 1799 to 1816 there were six rates: the lowest, eight cents for forty miles; the highest, twenty-five cents for over five hundred. During the year 1815, these rates were fifty per cent higher. From 1816 to 1845 the rates were six cents, ten, twelve and a half, eighteen and three-fourths, and twenty-five, for distances from thirty miles to four hundred and upwards. In 1845 the rates were greatly reduced in amount, and the system simplified. Under three hundred miles the postage was five cents; over that distance, ten cents. In 1851 this was changed to three cents for three thousand miles, if prepaid, and five cents if not prepaid; over three thousand miles, double these rates were charged. In 1863 the present rate was established—three cents to any part of the United States. In 1872, postal cards were authorized, which are carried in the mails at a postage charge of one cent each, including the cost of the card.

Until 1845, letters were single or double, according as there was one piece of paper or two; since that time a letter or parcel not exceeding half an ounce has been deemed a single letter. Prior to 1851 there was no reduction for prepayment. In that year a difference of two cents was made, as stated above. In 1855, prepayment was required, and this continues to be the rule.

Postage stamps were introduced in 1847. but did not become general till 1855, when letters were required to be prepaid. Stamped envelopes were furnished first in 1852.

In 1855, for the greater security of valuable letters, the Postmaster-General was authorized to establish a plan for *registration.* A fee of ten cents besides the regular postage is charged for registering a letter.

The government takes special charge of such letters, but does not hold itself responsible if they are lost.

In 1864 the *postal money-order* system was established. This enables one who wishes to send money to a correspondent to do it by depositing the amount with a postmaster, and receiving an order on the postmaster of the place where his correspondent lives. A small fee is charged, ranging from ten to twenty-five cents according to the amount of the order. No order is issued for more than fifty dollars. The postmaster is entitled to one-third of the fees collected by him, and one-fourth of one per cent of the orders which he pays. Money orders are exchanged between the United States and Canada, Great Britain and Ireland, Germany, Switzerland, and Italy.

In 1863, the Postmaster-General was authorized to provide for the *free delivery* of letters by carriers, in cases which, in his judgment, might justify it. In 1865 the system of free delivery was required to be established in every place containing a population of fifty thousand, and at such other places as might be thought best. In 1873, letter carriers were authorized in all places containing not less than twenty thousand inhabitants. The postage on *drop letters* is two cents in places where there is free delivery; in other places, one cent.

Letters unclaimed for a certain time are advertised; if not called for, they are sent to the Dead-letter Office. Here they are opened and returned to the writers. During the year ending June 30th, 1872, there were 4,241,374 dead letters. The name and address of the writer upon the envelope secures its return to him if not called for.

The *franking* privilege, or privilege of sending and receiving mail matter free, was formerly enjoyed by the President, Vice-President, the Cabinet officers, the Members of the Senate and House of Representatives, the Delegates from the Territories, and some others. In general, it was limited to the term of office, but Senators and Representatives could retain it till the December following the expiration of their term. To each of the first four Presidents it was voted for the remainder of his life, and subsequently it was conferred for life on all Ex-Presidents. It has also been voted to the widows of the Presidents during their lives. In February, 1873, the franking privilege was abolished, the act to take effect the first of July following. Modifications have since been made. The act of March, 1877, provides that letters and packages on government business may be sent free from the departments, and that Senators and Representatives may receive and send all documents printed by Congress.

Mail Routes.—Obstruction of the mails is forbidden under heavy penalties, as is the carrying of mail matter outside of the mails by public carriers.

In 1825 it was enacted, "That no other than a free white person shall be employed in conveying the mail; and any contractor who shall employ, or permit, any other than a free white person to convey the mail, shall, for every such offense, incur a penalty of twenty dollars." This disqualification continued for forty years; it was removed March 3d, 1865.

The power to establish post-roads has been interpreted to include the power of making internal improvements. In 1803, Congress authorized three per cent of the net proceeds of the sale of public lands in the State of Ohio to be paid to that State for the construction of roads. In 1806, an act was passed for the construction of the *Cumberland Road* — more commonly called the *National Road* — from the River Potomac to the Ohio. Both these acts were approved by Mr. Jefferson, as President, though in one of his messages he expresses the opinion that Congress, under the Constitution, does not possess the power of making roads. While doubting the existence of the power, he appeared to favor an amendment to the Constitution conferring it upon Congress.

As the object of granting to Congress the power to establish post-offices and post-roads was to give them the control of the transmission of correspondence, it is claimed that the electric telegraph should be managed by the government. The control over this agency, it is said, can be abdicated by the government with no more propriety than that over correspondence by railroad or steamboat. The subject was referred to committees in the Forty-second Congress, and favorably reported on. The plan proposed provides that telegrams be received and distributed through the post-office, and transmitted like other postal matter by parties owning and operating the lines, and contracting to perform the service at rates fixed by Congress.[1]

Clause 8. — *To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries.*

This clause authorizes Congress to issue *copyrights* to authors, and *patents* to inventors. There is no limitation to science in the strict sense of the word, nor to the useful as distinguished from the fine arts. All books, maps, charts, musical compositions, engravings, photographs (or negatives), chromos, statues, etc., whatever the subject may be, are included, and so are all inventions. There are many copyrights and patents issued which promote the progress neither of science nor of the useful arts. But there can be no question as to the propriety of giving to authors and inventors the exclusive right for a limited time to their works.

Copyrights.—In England authors have rights to their works by common law as well as by statute; but in this country the right is derived entirely from legislation. Prior to the adoption of the Constitution, the States granted copyrights, and the first act of Congress on the subject recognized the rights thus granted. The first law was enacted in 1790, and gave to the authors the exclusive right to their works for fourteen years, with liberty of renewal for a like period. In 1831 the term was made twenty-eight years, with the right to renew for fourteen years longer. If the author has died, the renewal may be made by the widow or children.

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[1] North American Review, July, 1873.

A copyright is obtained as follows: A printed copy of the title of the book, or a description of the painting or other article for which a copyright is desired, must be sent to the Librarian of Congress, and within ten days from the publication two copies of the book, or a photograph of the painting, must be sent to the said Librarian. In every copy of the book there must be entered on the title page, or the page following, the words "Copyright, 18—, by A. B." The copyright now issued by the Librarian of Congress was formerly issued by the Clerk of the District Court of the United States the present law having been enacted in July, 1870. In books printed early in the century, the copyright entry on the page following the title page was full and formal, sometimes covering the entire page.

The copies of books and other articles for which copyrights were obtained were kept in the Department of State till 1859, when they were transferred to the Department of the Interior. In 1870, they were placed under the control of the Librarian of Congress. When the Smithsonian Institution was established in 1846, Congress provided that a copy of every book for which a copyright was granted should be placed in the library of that institution, and another copy in the Congressional Library. These seem to have been in addition to the copy deposited with the Clerk of the District Court when the copyright was obtained. In 1859 the provision as to the copy for the library of the Smithsonian Institution was repealed. Two copies are now sent to the Librarian of Congress, as stated above. During the year ending December 1st, 1877, copyrights were entered for 4,476 volumes of books, and for 3,518 pamphlets and periodicals. The whole number of copyrights entered during the year was 13,979.

If there are different editions of the work issued at the same time, the two copies deposited must be of the best edition; a copy of every subsequent edition in which any substantial changes are made must also be sent. The penalty for failure to send these copies is twenty-five dollars.

A copyright is assignable in law, but the assignment must be recorded in the office of the Librarian of Congress within sixty days. The mode of securing a renewal of a copyright is the same as for obtaining the original; it must be done within six months before the expiration of the first term.

The subject of international copyright has been discussed with much earnestness by authors and publishers, and organizations have been formed for the purpose of securing the necessary legislation. Thus far, however, there has been no action of Congress on the subject.

Patents.—Provision was made by Congress in 1790 for giving to inventors the exclusive right to their discoveries. From that time to the present, patents have been issued, the number increasing each year. At first, applications for patents were made to the Secretary of State, and the decision was made by a Board, consisting of the Secretary of State, the Secretary of War, and the Attorney-General. In 1793 the Secretary of State alone was authorized to issue patents. In 1836, an office, or bureau, was created in the Department of State, under the name of the Patent Office, the chief officer being styled the Commissioner of Patents. From that time, patents have been issued by the Commissioner. The Patent Office was transferred to the Department of the Interior in 1849, when this latter department was created. Originally patents were signed by the President of the United States; then by the Secretary of State and the Commissioner of Patents; now by the Secretary of the Interior and the Commissioner.

The term for which a patent was valid was fourteen years originally, but in 1870 it was made seventeen years. It is competent for Congress to extend the time of a patent, whether application be made before or after the expiration of the original term. In 1836 the power to extend for seven years if the patentee had failed to receive a suitable return for his time, ingenuity, and expense, was conferred on a Board, consisting of the Secretary of State, the Commissioner of Patents, and the Solicitor of the Treasury. But such extension must be granted before the expiration of the time for which the patent was originally issued. Since 1848 the power to extend in such cases has been exercised by the Commissioner.

Prior to the formation of the Constitution the issuing of patents, as well as the granting of copyrights, was lodged in the several States. But while copyrights were granted, at least in some of the States, by general legislation, no patents were issued except by special legislative acts.[1]

When application is made for a patent, a model of the article is required to be deposited in the Patent Office. There has gradually been gathered in this way a vast collection of models and specimens, making the Patent Office at Washington a place of resort to most who visit the national Capital. In 1836 the building in which these were contained was burned, and many of the models were destroyed; but Congress made an appropriation of one hundred thousand dollars to procure duplicates of those which were the most valuable. The present buildings extend over two entire blocks of the city of Washington.

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[1] Curtis, II, p. 339.

Patents may be granted for *designs* and *trade-marks*, as well as for machines. Designs may be patented for three years and six months, for seven years, or for fourteen years; and trade-marks may be patented for thirty years.

The applicant for a patent must make oath that he believes himself to be the original inventor of that for which he seeks a patent; he must file a full description of the same, and, in all cases admitting it, must present drawings and a model. A prior patent in a foreign country does not debar him from receiving a patent here, provided the invention shall not have been introduced into public use in the United States for more than two years prior to the application.

If one has made a discovery or invention, but wishes to mature it, he may file a *caveat*, setting forth its character, and praying for protection of his right until he can mature the invention. Should another apply within a year for a patent covering the same ground, notice is given to the first applicant, who must file his description, etc., within three months.

The fees in the Patent Office are, on filing the application for a patent, fifteen dollars; on issuing the patent, twenty dollars; on filing a caveat, ten dollars; on application for extension of a patent, fifty dollars; on granting an extension, fifty dollars. The fees for patents for designs are, for three years and a half, ten dollars; for seven years, fifteen dollars; for fourteen years, thirty dollars. The fee for protection for a trade-mark is twenty-five dollars. The first law regulating patents, passed in 1790, made the fees very small—about four dollars. But in 1793 it was provided that every inventor should pay thirty dollars before presenting his petition.

The receipts of the Patent Office are usually more than the expenditures, though there are exceptional years. Over 330,000 applications for patents have been filed since 1836, and about 219,000 patents have been granted. Comparing the years 1840 and 1877, we find a very remarkable increase. Thus in 1840 the applications were 765, and in 1877 the number was 20,308; in 1840, patents issued, 473; in 1877 the number was 13,619; in 1840 the caveats filed were 228; in 1877 they were 2,809; in 1840 the receipts and expenditures were, respectively, $38,056 and $39,020; in 1877 they were $732,342 and $613,152, the excess of the receipts over the expenditures being $119,190.

The Commissioner of Patents makes an annual report, giving, among other things, a list and description of all patents granted, with the names of the patentees. Drawings of all the inventions are also published. These Patent Office Reports now form many volumes, and constitute a record of the industrial progress of the country. For a number of years prior to 1863, one volume of the annual report was devoted to Agriculture; but in 1862 a Department of Agriculture was established, with a Commissioner at the head of it; and an annual report on Agriculture is issued by this Commissioner. In 1871 the publication of the specifications and engravings was discontinued, in connection with the annual report of the Commissioner of Patents, and a weekly Gazette substituted.

Patents are assignable, but the assignment must be recorded in the Patent Office. All patentees, and those making or selling patented articles under them, must cause the word "patented," with the date of the patent, to be affixed to each article, that the public may have notice of its character.

Clause 9.—*To constitute tribunals inferior to the Supreme Court.*

The Constitution itself provides for the Supreme Court (Art. III), but leaves to Congress the question of the inferior courts. Congress, at its first session, established two tribunals inferior to the Supreme Court, called the Circuit and District Courts; and these three still constitute the judiciary of the United States. In 1855 the Court of Claims was established, which hears and determines claims on the government. All these will be considered under Article III.

Clause 10.—*To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.*

Piracy is robbery at sea. The common law recognizes and punishes it as an offense against the universal law of nations; a pirate being deemed an enemy of the human race. The Continental Congress, in 1781, declared death to be the punishment for piracy. In 1790 an act was passed by Congress providing for the same punishment. In 1820 Congress passed an act which declared it to be piracy to land on a foreign shore and seize negroes or mulattoes, or decoy them on board vessels, with intent to make them slaves.

At common law that was considered felony which occasioned the forfeiture of lands and goods, and for which the punishment of death might also be inflicted. Capital punishment does not necessarily enter into the definition of felony, yet the idea of felony is so generally connected with that of capital punishment that it is difficult to separate them.[1]

By *high seas* is meant, in general terms, the ocean, including the waters along the coast beyond low-water mark.

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[1] Tiffany, p. 241.

A nation is responsible for its citizens, and must punish them if they interfere with the rights of other nations; otherwise there will be retaliation, and friendly relations will be disturbed. The Constitution, therefore, gives to Congress authority to define and punish offenses against the law of nations.

Clause 11.—*To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.*

The power to declare war belongs to the sovereignty of a nation. It is one of the highest acts which any government can perform, involving interests of the greatest importance, and affecting the property and lives of the people. In Great Britain the power to declare war is the exclusive prerogative of the Crown. Mr Pinckney proposed in the Convention that it should be in the Senate; so Mr. Hamilton also; Mr. Butler proposed that it should be in the President.

In one of the two wars in which the United States has been engaged there was a formal declaration of war; in the other, war was recognized as already existing. Thus, in 1812, it was enacted, "That war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories."[1] And, in 1846, the preamble of the act of Congress says, "Whereas, by the act of the Republic of Mexico, a state of war exists between that government and the United States." In 1798 Congress declared the United States to be freed and exonerated from the stipulations of the treaties with France, because that power had repeatedly violated the treaties and refused all reparation. A few days later an act was passed, authorizing the President to instruct the commanders of armed vessels to capture any French armed vessels.

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[1] The act is entitled "An Act declaring war between the United Kingdom of Great Britain, etc., and the United States of America and their territories."

In the case of Great Britain only, was there a formal declaration of war by Congress. In the other cases a state of hostilities was recognized, making hostile measures on our part necessary. The war of the Southern Rebellion was neither declared nor formally recognized, although hostilities commenced some months before Congress met. The rebellion as an existing fact is scarcely alluded to in any of the several acts passed at the special session convened in July, 1861. The language is hypothetical: "Whenever it shall, in the judgment of the President, by reason of unlawful combinations of persons in opposition to the laws of the United States, become impracticable to execute the revenue laws," etc. "If two or more persons within any State or Territory shall combine together to overthrow the government of the United States," etc. There is an act to provide for the payment of the militia and volunteers called into the service of the United States, but against what enemy the act does not say. The most distinct recognition of the rebellion is in a section of an act to increase the military establishment of the United States. It is declared that this increase is "for service during the existing insurrection and rebellion." So in the preamble to an act for calling out the national forces, passed March 3d, 1863.

The word *marque* signifies landmark or boundary, and *letters of marque* denote the commission issued to a private person, authorizing him to pass the frontier and take the persons or property of the subjects of another nation from which injury has been received. The word *reprisal*, meaning a retaking, indicates the purpose for which the commission is issued. A vessel bearing such letters is called a privateer. Without this authority the seizing of men and goods would be piracy. The law of nations recognizes the right of one nation to take this mode of obtaining redress from another. Oftentimes letters of marque and reprisal are issued before a declaration of war. They may prevent a war, or they may occasion it.

The rules concerning captures are not limited to those made beyond the nation's territory, but apply also to the property of enemies found within the territory. The Supreme Court has decided that these rules are an express grant to Congress of the power of confiscating enemy's property found within the territory at the declaration of war.[1]

Clause 12.—*To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.*

Under the Articles of Confederation, Congress could declare war, but they could not raise armies. They had power only "to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants of such State."[2] "The experience of the whole country, during the Revolutionary War, established, to the satisfaction of every statesman, the utter inadequacy and impropriety of this system of requisition. It was equally at war with economy, efficiency, and safety."[3]

This clause gives the power to raise and support a standing army, or "the military peace establishment of the United States," and the large armies necessary in times of war. Three times in our national history, since the war of the American Revolution, has it been necessary to call out large bodies of men: in the war with Great Britain in 1812, in that with Mexico in

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[1] 8 Cranch, p. 110.

[2] Articles of Confederation, Art. IX.

[3] Judge Story.

1846, and during the late rebellion. The number of men called into the service of the government in the war of the rebellion was vastly greater than in either of those preceding. There were over a million of men in the Army of the United States at the close of the rebellion.

There was a small standing army at the time the Constitution was formed. The organization has been continued to this time. By act of Congress of July, 1866, the regular army was to consist of five regiments of artillery, ten of cavalry, and forty-five of infantry. Of general officers there were one General, one Lieutenant-General, five Major-Generals, and ten Brigadier-Generals. The army has been largely reduced since 1866. In 1871 it consisted of 30,000 men, and in 1874 it was reduced to 25,000. It was also provided that no new appointments should be made of Major-Generals or of Brigadier-Generals till the number should be below three and six respectively; and that then the number of Major-Generals should not exceed three, or that of Brigadier-Generals exceed six.

It was also provided that the offices of General and Lieutenant-General should cease with the present officers. The office of Lieutenant-General was created in 1798, and General Washington received the appointment. The office of General was created in 1799, and abolished in 1802. In 1855, the office of Lieutenant-General was revived that it might be conferred by brevet on General Winfield Scott. In 1864 General Ulysses S. Grant was appointed Lieutenant-General, and became the highest military officer under the President. The office of General was revived in 1866, and General Grant was appointed to the office. Major-General William T. Sherman was then appointed Lieutenant-General. On the election of General Grant to the Presidency, Lieutenant-General Sherman was made General, and Major-General Philip H. Sheridan Lieutenant-General.

The appropriation is limited to two years, which is the Congressional term. This gives the virtual control of the army to the people.

Clause 13.—*To provide and maintain a navy.*

There was no opposition in the Convention to giving to Congress this power, but in some of the State Conventions much hostility was manifested. The Department of the Navy was not established till 1798; the general charge of the naval forces and the matters pertaining to naval affairs having been up to that time committed to the Department of War, which had been established in 1789. It was not till the brilliant naval achievements during the war with Great Britain that all jealousy disappeared, and the desire to make our navy equal to that of other nations was manifested by the whole nation. With such an immense sea-coast on both oceans, and with so great a commerce with all nations, the United States needs a strong naval force for the protection of our maritime interests.

The Navy Department has been, from its establishment in 1798, under the charge of a Secretary. In July, 1861, provision was made for an Assistant Secretary, but the office was abolished in March, 1869.

By the report of the Secretary, in November, 1876, the Navy consisted of 146 ships of all classes. Exclusive of howitzers and gatlings, they carry 1142 guns. Of these vessels, 75 are in actual use.

The number of persons authorized to be enlisted into the Navy, including seamen, landsmen, and mechanics, as also apprentices and boys, is seven thousand five hundred. The Marine Corps, which consists of those who are trained to serve on land as well as on vessels of war, numbers twenty-five hundred privates, with nearly seven hundred officers, including musicians. The highest officer of the Marines has the rank and pay of a Brigadier-General.

The officers of the Navy are as follows, with their rank corresponding to that of officers of the Army:

Navy.	*Army.*
Admiral.	General.
Vice-Admiral.	Lieutenant-General.
Rear-Admiral.	Major-General.
Commodore.	Brigadier-General.
Captain.	Colonel.
Commander.	Lieutenant-Colonel.
Lieutenant-Commander.	Major.
Lieutenant.	Captain.
Master.	First Lieutenant.
Ensign.	Second Lieutenant.

Until 1862, the office of Captain was the highest recognized by law. A Captain commanding two or more ships was called a Commodore by custom, and this title, when once applied to an officer, was usually continued.[1] In 1862 the offices of Rear-Admiral and Commodore were created, in 1864 that of Vice-Admiral, and in 1866 that of Admiral. By act of January 24th, 1873, Congress provides that when the offices of Admiral and Vice-Admiral become vacant, the grades shall cease to exist. The present Admiral (1877) is David D. Porter; and the Vice-Admiral, Stephen C. Rowan. There are twelve Rear-Admirals and twenty-five Commodores.

Clause 14.—*To make rules for the government and regulation of the land and naval forces.*

The power to declare and carry on war involves that of providing armies and navies, and that of governing the forces thus raised. Rules for the government of these forces have been made by Congress in accordance with this clause. In 1806,[2] an act was passed establishing the Rules and Articles of War for the government of the Army. Every officer must subscribe these articles, in number a hundred and twenty-eight; they are read to every recruit at the time of enlistment, and they are read and published every six months to every garrison, regiment, troop, or company.

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[1] Gillet's Federal Government, p. 335.

[2] April 10th.

An act for the government of the Navy was first passed in 1799,[1] but it was repealed the next year and a new one passed.[2] The rules now in force were enacted in 1862.[3] For minor offenses the commanding officer may inflict such punishments as reprimand, suspension from duty, arrest or confinement, neither of which shall continue longer than ten days, except a further period be necessary to bring the offender to a Court Martial. For greater offenses, both in the army and navy, a trial is held before a Court Martial, and such punishments may be inflicted as the Court may pronounce, even to the taking of life. Until 1850, flogging was one of the punishments inflicted in the navy, but by act of the twenty-eighth of September of that year it was abolished in the navy and on board vessels of commerce. Flogging in the army was prohibited in 1812, but in 1833 an exception was made in the case of desertion. In 1861,[4] however, it was abolished.

Having thus two classes of Courts, civil and military, each of which is clothed with authority to sentence to the severest punishments, the country will be liable to a conflict of jurisdiction, especially in time of war. But it must not be forgotten that the two Courts are alike established by law. They owe their authority to the same source. The Court Martial has no power save what is given to it by Congress in accordance with the Constitution, and within its own jurisdiction its power is as legitimate as that of the civil Court.

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[1] March 2d. [2] April 23d, 1800. [3] July 17th. [4] August 5th.

Clause 15.—*To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.*

Clause 16.—*To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.*

The militia are distinguished from the regular army. They are the citizen soldiers of the country, liable to be called out in cases of emergency. These clauses virtually give Congress the whole power in regard to the militia. In 1792[1] an act was passed "to provide for the national defense by establishing a uniform militia throughout the United States." It provided for the enrolling of "every free able-bodied white male citizen of the respective States" between the ages of eighteen and forty-five. The act of March 2d, 1867, provided for the enrolling of negroes by striking out the word "white" from the act of 1792. In 1863,[2] Congress enacted that all citizens, and those who have declared their purpose to become such, between the ages of twenty and forty-five, shall constitute the national forces, and shall be liable to perform military duty in the service of the United States when called out by the President for that purpose.

A law providing for calling forth the militia in accordance with Clause 15 was passed in 1792.[3] An amended act was passed in 1795,[4] which is still in force. This law authorized the President to call out the militia, for the purposes specified, as he might judge necessary. The militia, when in the service of the United States, were to be subject to the same articles of war as the regular troops, and their time of service could not exceed three months in any one year. In 1862[1] this time was extended to nine months; and it was provided, if the militia had not been enrolled in any State, that the President might make all necessary rules and regulations for doing it.

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[1] May 8th. [2] March 3d. [3] May 2d. [4] February 28th.

The militia have been called out three times in the history of the country. The first was at the insurrection in the western counties of Pennsylvania, known as the "Whisky Rebellion." A portion of the inhabitants had opposed the execution of the laws imposing duties on domestic spirits, and this opposition was at length carried so far as to render necessary the interposition of force. On the seventh of August, 1794, the President issued a proclamation, commanding the insurgents to disperse, and at the same time made requisitions on the governors of New Jersey, Pennsylvania, Maryland, and Virginia, for their quotas of twelve thousand men. The number was afterwards increased to fifteen thousand. On the twenty-fifth of September another proclamation was issued, declaring the necessity of putting the force in motion. By this energetic action of the President the insurrection was quelled without bloodshed.[2] In his next message to Congress the President recommended a revision of the militia law, which was made in 1795.

The militia were again called out in 1812, in the war with Great Britain. In this case it was to "repel invasions."

Though the President was authorized, by act of Congress May 13th, 1846, to employ the militia, as well as the naval and military forces, and to accept the services of volunteers, in the prosecution of the war with

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[1] July 17th.

[2] Marshall's Life of Washington, Vol. V, Chap. viii; Pitkin's Pol. and Civil Hist. of the U. S., Vol. II, Chap. xxiii.

Mexico, the militia were not called out. The troops furnished by the several States were all volunteers.

The third instance in which the militia were called out was in the war of the rebellion in 1861. The first call was by proclamation of President Lincoln on the fifteenth of April, 1861, for "the militia of the several States of the Union to the aggregate number of seventy-five thousand, in order to suppress said combinations, and to cause the laws to be duly executed." The President, by order dated August 4th, 1862, called for a draft of 300,000 militia to serve for nine months. And again June 15th, 1863, he called for 100,000 militia from the States of Maryland, Pennsylvania, Ohio, and West Virginia, to serve six months. Thus in the late civil war there were three calls for the *militia* as such, to the number of 475,000 men. This was but a small part of the number in the service, the others being called for as *volunteers*. The whole number mustered into the service of the United States in the four years from April, 1861, was 2,656,553.[1]

Clause 17.—*To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.*

The district for the government of which provision is here made was ceded to the United States by Maryland and Virginia, and accepted by Congress July 16th, 1790. Maryland made the cession of that part lying east of the Potomac in December, 1788, and Virginia the part west of the Potomac in December, 1789. The act of Congress accepting the cession provides "that a district of territory not exceeding ten miles square, to be located on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted, for the permanent seat of government of the United States." The precise location was to be determined under the direction of the President by commissioners to be appointed by him.

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[1] Report of Secretary of War, Nov., 1866.

The act further provided that prior to the first Monday of December of that year--1790—all the government offices should be removed to Philadelphia from New York, where Congress was then in session, and should remain there until the first Monday of December, 1800, when they were to be removed to the permanent seat of government. The Continental Congress held their sessions in New York from January, 1785, till the Constitution was adopted, and the first Congress under the Constitution held the first two of its three sessions there. Thus the seat of government was at New York from March 4th, 1789, till the close of the second session of the first Congress, then at Philadelphia for ten years, and has been at Washington since December, 1800.

The original District of Columbia was ten miles square, its boundary lines running N. E., S. E., S. W., and N. W. It was divided into two counties, Washington east of the Potomac, and Alexandria west. In July, 1846, the latter was retroceded to Virginia.

The necessity of exclusive power on the part of Congress at the seat of government is abundantly manifest. Without it, the officers of the government might be interrupted in their duties, the public archives and other property injured, and Congress itself insulted. When the Continental Congress was in session at Philadelphia, the building where they were in session was surrounded by some mutinous soldiers, clamoring for their pay. The executive government of that State not giving to Congress adequate protection, that body immediately adjourned to Princeton, N. J.

No less necessary is it that the general government should have exclusive control of the places where forts, arsenals, etc., are erected.

The district in which the seat of government is located is obtained by cession from the State. The other places mentioned in the clause are purchased with the consent of the legislature of the State where they are located. In whichever manner acquired, the districts are under the exclusive control of Congress. They hold to the government the same relation as the territories do. There is no transfer of political power from the State to the general government. The latter does not exercise legislation by virtue of any authority derived from the States, but by virtue of the general powers granted by the Constitution. It was claimed, in a case before the Supreme Court, that Congress, when acting under this clause, must be considered as a mere local legislature, and not as administering the supreme law of the land. "But the Supreme Court held directly the contrary — that the power belonged to 'Congress as the legislature of the Union; for strip them of that character, and they would not possess it. In no other character can it be exercised. * * * Congress is not a local legislature, but exercises this particular power, like all its other powers, in its high character, as the legislature of the Union.'"[1]

"The efficiency of the government is all derived from the Constitution, and is equal in all places within its jurisdiction. It is supreme every-where. It is *inclusive* of all subordinate governments, where there are any, and *exclusive* where there are none. It is permanently *exclusive*, if there can be no other. It is temporarily *exclusive*, till a subordinate is instituted. It becomes *exclusive* again, if a subordinate is extinct, whether by right or by wrong; and it remains *exclusive*, when it is so, till a subordinate is rightfully restored."[1]

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[1] Farrar, p. 360; 5 Wheaton, p. 317.

As direct taxes are by Article I, Section 2, Clause 3, to be apportioned among the several States according to their respective numbers, it might be thought that the inhabitants of the District of Columbia would be exempt. But the Supreme Court has decided that Congress has the power to levy a direct tax on the District of Columbia, and also upon the territories. Congress is not bound to do it, but the power is possessed, qualified in the same manner as in regard to the States; *i. e.*, the tax must be in proportion to the population. A direct tax was levied upon the States in January, 1815. In February of the same year a tax was levied on the District of Columbia. The direct tax of $20,000,000 a year, according to act of August, 1861, included the District of Columbia, and all the territories then existing.

In the cessions to Congress under this clause, there has generally been a reservation of the right to serve State process, civil and criminal, upon persons found therein. Thus these places can not be made sanctuaries for fugitives.

On the sixteenth of April, 1862, slavery was abolished in the District of Columbia by act of Congress. At the same session of Congress (the second of the Thirty-seventh Congress), an act was passed declaring that there should be neither slavery nor involuntary servitude in any of the territories then existing, or which should be formed thereafter. In the District of Columbia provision was made to remunerate loyal owners for the slaves thus set free, not exceeding $300 each in the aggregate.

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[1] Farrar, p. 363.

In 1871 a territorial government was established for the District. It provided for a Governor, Secretary, Council (upper legislative house), Board of Health, and Board of Public Works, to be appointed by the President and Senate. There was a House of Delegates to be elected by the people. In 1874 the act was repealed, and until a new system could be framed, the government was entrusted to three Commissioners, to be appointed by the President and Senate.

In 1878 a new act was passed placing the government under a Board of three Commissioners; two to be appointed by the President and Senate for three years; and the third, an officer of the Corps of Engineers of the army, to be detailed by the President. These Commissioners have general charge of the municipal interests of the District, appointing the police, firemen, school trustees, and all other officers. They submit each year to the Secretary of the Treasury a detailed estimate of expenses, which on his approval, is transmitted to Congress. If Congress approves the estimate, one-half the amount is appropriated from the general treasury, and the other half is assessed upon the taxable property of the District.

Clause 18.—*To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.*

This, in substance, was in Mr. Pinckney's plan. The Committee of Detail reported it as it is now, and so did the Committee of Revision. There was no opposition or discussion in the Convention, but great opposition was made in the State Conventions. Patrick Henry often speaks of it as "the sweeping clause," by which Congress was to overthrow the States. Those opposed to the Constitution assailed it with great vehemence, and endeavored, through the prejudice excited, to prevent the Conventions of the States from ratifying the Constitution. Mr. Randolph's plan in relation to the powers of Congress was that "The National legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation; and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening, in the opinion of the National legislature, the Articles of Union, or any treaty subsisting under the authority of the Union." This was agreed to in Committee of the Whole.[1] The clause as to the power of Congress to veto State laws was lost in the Convention, five States voting for it, and six against it. Mr. Madison earnestly supported it.

Writers on Constitutional Law agree that Congress would have had ample authority to make all laws necessary and proper for carrying into execution the powers vested in the general government by the Constitution, even if this clause had not been inserted. If the Constitution provides for a government, and invests it with powers, it follows as an unavoidable inference that the legislative department of that government can make the laws needful for carrying those powers into execution. Mr. Madison says,[2] "Few parts of the Constitution have been assailed with more intemperance than this; yet, on a fair investigation of it, as has been elsewhere shown, no part can appear more completely invulnerable. Without the *substance* of this power, the whole Constitution would be a dead letter." He proceeds to show the folly of attempting a positive enumeration of the powers necessary and proper for carrying their other powers into effect; that "the attempt would have involved a complete digest of laws on every subject to which the Constitution relates; accommodated, too, not only to the existing state of things, but to all the possible changes which futurity might produce." No less chimerical would it be to enumerate the powers or means not necessary or proper for carrying the general powers into execution.

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[1] Elliot, V, p. 190. [2] Federalist, No. 44.

"Had the Constitution been silent on this head, there can be no doubt that all the particular powers requisite as means of executing the general powers would have resulted to the government by unavoidable implication. No axiom is more clearly established in law, or in reason, that whenever the end is required, the means are authorized. Wherever a general power to do a thing is given, every particular power necessary for doing it is included." Thus Mr. Madison.

Mr. Hamilton uses similar language.[1] "It may be affirmed with perfect confidence that the constitutional operation of the government would be precisely the same if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government and vesting it with certain specified powers."

Chief Justice Marshall says: "A power vested carries with it all those incidental powers which are necessary to its complete and efficient execution." This principle has been repeatedly sanctioned by the Supreme Court, and has been acted on by the general government from 1789 to the present day.

Judge Story says: "It would be almost impracticable if it were not useless, to enumerate the various instances in which Congress, in the progress of the government, have made use of incidental and implied means to execute its powers. They are almost infinitely varied in their ramifications and details."

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[1] Federalist, No. 33.

Nothing is plainer than that the Constitution was intended to vest in the general government all the powers which properly belong to such a government, and so it has been understood from the beginning. The affairs of the nation could not be carried on a single year if no laws were enacted but such as are specifically provided for in the Constitution. The very language of the Constitution in divers places presupposes that Congress could make laws for which no specific authority is given. Thus, in Art. I, Sec. 9, it is provided that the importation of slaves should not be prohibited till 1808; yet nowhere does the Constitution invest them with any authority to prohibit it then.

In the same section it is declared that, "The privileges of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." But where has the Constitution conferred upon Congress, or any department of the government, any distinct power to suspend this writ?

So also, "No bill of attainder or *ex post facto* law shall be passed." Such laws were passed by the British Parliament, and were not unknown in the legislation of the American States. Without this restriction, it was evidently supposed by the framers of the Constitution that Congress might do the same, although there is no clause granting such authority.

The same may be said in regard to granting titles of nobility, and requiring religious tests. The clauses prohibiting government from these acts are manifestly limitations upon its powers: without the limitations, it would have had ample authority in both cases. The First Amendment is of the same nature. Where does the Constitution intimate any power in either department of the government to establish religion, or prohibit the freedom of speech or of the press?

It is a favorite form of speech with many that the general government is one of enumerated powers, and especially is this said of the legislative department. "The powers specifically granted to Congress are what are called 'the enumerated powers,' and are numbered in the order in which they stand," says one of the Presidents in his message. Says another in a veto message, "The legislative powers vested in Congress are specified and enumerated in the 8th sec. of the first Article of the Constitution."

We have seen that the restrictions expressly placed upon Congress by the Constitution presuppose, in the absence of such restrictions, the existence of plenary powers to legislate for the general welfare. On any other supposition these prohibitions are entirely devoid of meaning. From the time of Washington's administration to the present day the government, in all its departments, has been carried on as a national government with full powers of sovereignty. Opposition to certain measures has often been based upon their alleged unconstitutionality; but when the political party from which the opposition came has itself been placed in power, it has not hesitated to deviate quite as far from the strict letter of the Constitution.

Among the acts which are indefensible on the theory of specially enumerated powers, and which can be sustained only on the general doctrine of national sovereignty, may be mentioned the purchase of Louisiana; the embargo act of 1807; the claim of the general government to be preferred as creditor not only to private citizens, but even to the State authorities; grants of lands for railroads and canals; the annexation of Texas; grants of lands for Agricultural Colleges; the establishment of a Department of Education; etc.

"The most remarkable powers," says Judge Story, "which have been exercised by the government, as auxiliary and implied powers, and which, if any, go to the utmost verge of liberal construction, are the laying of an unlimited embargo in 1807, and the purchase of Louisiana in 1803, and its subsequent admission into the Union as a State. These measures were brought forward, and supported, and carried by the known and avowed friends of a strict construction." "The friends of the latter measure were driven to the adoption of the doctrine that the right to acquire territory was incident to national sovereignty; that it was a resulting power, growing out of the aggregate powers confided by the Constitution; that the appropriation might justly be vindicated upon the ground that it was for the common defense and general welfare."

The people of the United States have ordained and established the Constitution for the purpose of providing for the common defense, and promoting the general welfare; and whatever legislation is necessary and proper to secure these ends is clearly within the authority of Congress, except in those particulars which the Constitution has expressly restricted. Upon this theory the government has been administered from the beginning. This has been the practice of every administration, whatever may have been its theory.

Sec. 9, Clause 1.—*The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*

The "persons" here mentioned were slaves. The clause permitted the slave-trade till 1808. As reported by the Committee of Detail, the provision was that such importation should not be prohibited; there was no limitation of time. It was provided also in that report that no tax or duty should be levied. The tax of ten dollars which the Convention finally decided upon was in fact never imposed by Congress. At the expiration of the twenty years the further importation of slaves was prohibited by an act passed March 2d, 1807, to take effect January 1st, 1808.

When the Constitution was formed, no nation had abolished the slave-trade.[1] Yet of the thirteen American States all but three had prohibited the importation of slaves. These three were North Carolina, South Carolina, and Georgia; and they insisted upon a provision in the Constitution for the admission of slaves, at least for a limited period. Hence the clause as it appears.

The following is a summary of the action of our government touching slavery and the slave-trade:

In 1787[2] the Continental Congress passed an "Ordinance for the government of the Territory of the United States north-west of the river Ohio," which provided that in the Territory there should "be neither slavery nor involuntary servitude, otherwise than in punishment of crimes."

The slave-trade to foreign countries was prohibited in 1794.[3]

The importation of slaves was prohibited in 1807,[4] the law to take effect January 1st, 1808.

In 1820[5] the slave-trade was declared to be piracy, to be punished with death.

Slavery was abolished in the District of Columbia by act of Congress in 1862,[6] and in the Territories the same year.[7]

The President's first proclamation as to emancipation of slaves in the rebel States was issued September 22d, 1862. The second proclamation, emancipating them, is dated January 1st, 1863. The coastwise slave-trade was forever prohibited by act of July 2d, 1864.

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[1] Great Britain abolished it March 25th, 1807.

[2] July 13th. [3] March 22d. [4] March 2d. [5] May 15th.
[6] April 16th. [7] June 19th.

The Thirteenth Amendment to the Constitution, abolishing slavery throughout the United States and all places subject to their jurisdiction, was proposed to the legislatures of the States by Congress, February 1st, 1865, and was ratified December 18th, 1865.

Clause 2.—*The privilege of the writ of* habeas corpus *shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.*

A writ is a legal instrument or writing issued by a competent authority, commanding the performance or non-performance of some act by the person to whom it is directed. These writs were formerly written in Latin, and they are often designated by some important Latin words contained in them. The words *habeas corpus* mean "you may have the body;" and the writ is issued by the judge having competent authority commanding the officer to bring the person held in confinement before the judge, that he may inquire into the cause of his imprisonment. The object is to prevent any illegal imprisonment or detention; and it is regarded as one of the great bulwarks of personal liberty. The writ may be granted upon the application of the person himself who is restrained of his liberty, or on the application of another person in his behalf. If, upon judicial inquiry, he is found to be imprisoned or confined for sufficient cause, he is still held in confinement; but if it appears that he has been arrested illegally, he is set at liberty.

Such writs are issued not only to release from confinement those who are unlawfully imprisoned, but to enable parents to get control of their children when held in custody by others, and to set at liberty sane persons who may be confined under pretense of insanity.

The application must be accompanied with an affidavit that the detention is contrary to law, and setting forth the facts in the case. "Though the writ of *habeas corpus* is a writ of right, it is not a writ of course; and the judge is not bound to grant it except for cause shown."

From the application itself it may be evident to the judge that the arrest was legal; in which case the writ of *habeas corpus* will not be issued.

The Constitution does not determine by whom the privilege of the writ of *habeas corpus* may be suspended, whether by Congress, or the President, or both. The more common opinion has been that the power belongs to Congress and not to the President. In 1807, a bill for the suspension of the writ was lost in the House of Representatives after having passed the Senate. The first act passed by Congress to suspend the writ was in March, 1863. It had, however, been previously suspended by President Lincoln (April 27th, 1861) in an order to Lieutenant-General Scott. This had reference to the military line between Philadelphia and Washington. The President, also, by proclamation, authorized the commander of the forces on the Florida coast to suspend it on the islands near the coast. This proclamation was dated May 10th, 1861. This action of the President was in accordance with the opinion of the Attorney-General, who is his legal adviser. Attorney-General Bates says; "If by the phrase, the suspension of the writ of *habeas corpus*, we must understand a repeal of all power to issue the writ, then I freely admit that none but Congress can do it. But if we are at liberty to understand the phrase to mean, that in case of a great and dangerous rebellion like the present, the public safety requires the arrest and confinement of persons implicated in that rebellion, I as freely declare the opinion that the President has lawful power to suspend the privilege of persons arrested under such circumstances; for he is specially charged by the Constitution with the 'public safety,' and he is the sole judge of the emergency which requires his prompt action."

Most of those who believe that the Constitution gives to Congress the power to suspend the writ, would admit that in cases of exigency the President might exercise the power without the authority of Congress. Thus Mr. Mulford says: "Since the legislature can not always act with the immediate energy which may be demanded, and does not act continuously, in its supreme necessity, in the actual or in the imminent peril of the nation, it becomes not only the office but the imperative duty of the executive to assert it."[1]

In the act of Congress passed March 3d, 1863, the President was authorized to suspend the privilege of the writ in any case throughout the United States, whenever in his judgment the public safety should require it. The same act contained a clause of indemnity to the President and those acting under his orders for any arrest or imprisonment during the existence of the rebellion. The suspension of the writ of *habeas corpus* in the recent rebellion was, therefore, by the authority of both the legislative and executive departments of the government.

The suspension of the writ does not make it unlawful for the judge to issue the writ; but the writ having been issued, it is a sufficient return, or answer, to it to say, that the privilege of the writ had been suspended.

Though the writ of *habeas corpus* had never been suspended, either by the Congress or the President, until the late rebellion, it appears to have been suspended by military officers. "During the administration of President Washington, in the Pennsylvania 'Whisky Insurrection' of 1794 and 1795, the military authorities engaged in suppressing it disregarded the writs which were issued by the courts for the release of the prisoners who had been captured as insurgents. General Wilkinson, under the authority of President Jefferson, during the Burr Conspiracy of 1806, suspended the privilege of this writ, as against the Superior Court of New Orleans. General Jackson assumed the right to refuse obedience to the writ of *habeas corpus* first in New Orleans, in 1814, as against the authority of Judge Hall, when the British army was approaching that city; and afterward, in Florida, as against the authority of Judge Fromentin."[1]

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[1] The Nation, p. 188.

Clause 3.—*No bill of attainder or* ex post facto *law shall be passed.*

A *bill of attainder* is a legislative act inflicting death or other punishment without a judicial trial. If the punishment is less than death, the act is now called in England a bill of pains and penalties. The legislature in passing such a bill assumes the functions of the judicial department of the government; it pronounces sentences and inflicts punishments not determined by previous law; and it ordinarily gives the person accused no opportunity of defending himself. "Such was the bill of attainder in England, and such was it in this country at the time of the adoption of the Constitution. By that the whole subject was abolished and prohibited entirely and forever."[2]

An *ex post facto* law is one which makes an act criminal which was not criminal when committed.

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[1] Halleck's International Law and Laws of War, quoted by Hon. A. F. Perry.

[2] Farrar, p. 420.

So a law would be *ex post facto* that inflicts a greater punishment than the law imposed when the crime was committed. The phrase applies only to penal and criminal laws, and not to civil proceedings which affect private interests retrospectively. A law abolishing imprisonment for debt would not be an *ex post facto* law, though it should apply to past contracts; nor would a law rectifying some error, as making deeds of land valid, which were void through some defect.

In the case *ex parte* Garland, the majority of the Supreme Court held that the law of January 24th, 1865, which required a prescribed oath of every attorney before he could practice at the bar of a United States Court, was in violation of this clause, and therefore unconstitutional. Judges Chase, Davis, Miller, and Swayne dissented; in their judgment the act of Congress referred to was neither a bill of attainder nor an *ex post facto* law.

Clause 4.—*No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.*

A capitation tax is a poll tax. The tax is levied not according to property, but by the head. By Article I, Section 2, the Constitution provided that direct taxes should be divided among the States according to the population; and in estimating the population, only three-fifths of the slaves should be counted. This clause would therefore exempt two-fifths of the slaves from every poll tax levied by the general government. It was to secure this exemption, and to prevent the levying of any special tax on slaves, that the clause was inserted. No capitation tax has ever been levied by the United States. In some of the States it is forbidden by their Constitutions. The direct tax of 1798 was assessed upon dwelling-houses, lands, and slaves—upon each slave fifty cents. This was not a capitation tax, though in the States where slaves were held, a part of the tax was levied upon the capitation principle, so far as the slaves were concerned.

Clause 5.—*No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.*

That part of this clause which relates to the taxing of *exports* was reported by the Committee of Detail in connection with the clause relating to the importation of slaves. There was strong opposition in the Convention to giving up the right to tax exports. Several of the most influential members, Washington, Madison, Wilson, Morris, and others, were in favor of allowing Congress to tax exports as well as imports, regarding the power as essential to a general government.

This prohibition has been generally understood as including all exports, though there has been no judicial decision upon the subject. The opinion is held by some that the intention was to prevent any discrimination against a particular State, and that Congress is not prohibited from levying an export duty on articles exported from a number of States.[1]

The Constitution of the Confederate States contained no such clause of prohibition, and heavy export duties were levied upon cotton.

To "enter" a port is to report the ship with the cargo to the proper officer, and obtain permission to land the cargo. To "clear" is to obtain from the proper authorities the necessary papers for sailing from the port. While we were colonies under Great Britain, no

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[1] North American Review, July, 1865.

American ship could trade with any port in Europe unless it first entered and cleared from a British port. But now a vessel can take her cargo from New York, or Boston, or New Orleans, directly to any European port. So a vessel can go from any one American port to any other. This latter constitutes the coasting trade, which is vastly greater in amount than the foreign trade.

A former clause (Sec. 8, Clause 1) requires all duties, imposts, and excises to be uniform throughout the United States. This clause, providing that no preference should be given to one State over another in any commercial regulation, is of the same character. The different States were to be treated with absolute impartiality and equal justice by the general government.

Clause 6.—*No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.*

The propriety of this clause is obvious. It is a limitation on the Executive Department, and not on the Legislative. The appropriations are voted annually, the fiscal year ending on the thirtieth of June. These appropriations are made for the different departments of the government with much detail, and the duties devolving on the Committee on Appropriations are very arduous and responsible. The acts making appropriations for the year ending June 30th, 1872, fill ninety-eight pages of the United States Statutes at Large. To show the minuteness of these appropriations, there are fifteen different specifications under the head of "Library of Congress."

The account of the receipts and expenditures is annually reported to Congress by the Secretary of the Treasury. These reports form an important part of the executive documents of the government.

Clause 7.—*No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.*

"Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded there can never be serious danger that the government will be any other than that of the people."[1]

The second clause is to prevent any officer of the government from being influenced by a gift of any kind from any foreign prince or state. History shows abundant instances of the bribing by one government of the officials of another. When presents have been sent to officers of our government by a foreign power, they have become the property of the government, or Congress has authorized those to whom they were sent to receive them.

At the second session of the Eleventh Congress, an amendment to the Constitution was proposed, two-thirds of both houses concurring, extending this prohibition to private citizens. "If any citizen of the United States shall accept, claim, receive or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."[2] But this proposed amendment has never been ratified by the requisite number of States.

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[1] Hamilton, Federalist, No. 84.

[2] U. S. Statutes at Large, II, p. 613.

Sec. 10, Clause 1.—*No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder,* ex post facto *law, or law impairing the obligation of contracts, or grant any title of nobility.*

This section contains prohibitions and restrictions on the power of the States. The Constitution is the expression of the will of the nation; that is, of the people of the whole country. To the nation belongs the sovereign power. In the Constitution the nation has declared that the general government shall exercise all the powers of national sovereignty, and that the States shall have authority in matters of local and municipal government. Powers pertaining to national sovereignty are expressly denied to the States in this tenth section. Nearly all these prohibitions are found also in the Articles of Confederation, and some of them are expressed there in terms stronger than in the Constitution.

We find, indeed, in those Articles the clause, "Each State retains its sovereignty, etc.," but the words are without meaning, as the Articles themselves make the general government sovereign, and not the States. Though we often hear the States spoken of as sovereign, they have never been so in fact. They were Colonies till the fourth of July, 1776, and then the United Colonies became a nation, and each Colony became a State. From that day to this the individual States have exercised none of the powers of sovereignty. It is not unfrequently said that the States parted with their sovereignty when the Constitution was formed; implying that till then they possessed sovereign powers. But they could not part with what they never possessed. The question is one of fact, and not one of theory. The Continental Congress exercised the powers of national sovereignty from the day of the Declaration of Independence till the present Constitution went into operation. In the language of Mr. Jay, afterward Chief Justice of the Supreme Court, "To all general purposes, we have uniformly been one people; each individual citizen every-where enjoying the same national rights, privileges, and protection. As a nation, we have made peace and war; as a nation, we have vanquished our common enemies; as a nation, we have formed alliances, and made treaties, and entered into various compacts and conventions with foreign states."[1]

The Articles of Confederation prohibited the States from "sending any embassy to, or receiving any embassy from, or entering into any conference, agreement, alliance, or treaty, with any king, prince, or state," without the consent of the United States. In the Constitution the prohibition is absolute. Were each State to have the power to form *alliances* with foreign nations, it would be impossible to preserve the peace and harmony of the several parts of the Republic. The Union would soon be dissolved, and the nation split into fragments. Could the States grant *letters of marque*, it would be in the power of any one to involve the rest in war. All these powers, being incident to national sovereignty, are thus wisely and necessarily prohibited to the States.

The Articles of Confederation allowed the States to coin money, but gave to Congress the exclusive right to regulate the alloy and value of the coin. The power of the States in regard to money was thus a qualified power. But the provision of the Constitution, prohibiting the States absolutely from coining money, is a manifest improvement on the previous system.

The States are also prohibited from emitting bills of credit. "To constitute a bill of credit, within the Constitution, it must be issued by a State, involve the faith of the State, and be designed to circulate as money, on the credit of the State, in the ordinary uses of business." Such bills may or may not bear interest; they may or may not be made a legal tender. Neither of these circumstances would affect them as bills of credit. The State of Missouri issued loan certificates, bearing interest and redeemable by the State, which were made receivable for taxes and debts, and by public officers in payment of their salaries. But the Supreme Court decided that they were bills of credit, and therefore unconstitutional. A State may borrow money and issue bonds therefor; such bonds are not bills of credit. The paper currency issued by the Continental Congress, and by the several States prior to the adoption of the Constitution, was known as bills of credit.

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[1] Federalist, No. 2.

The evils of the paper money issued by the States after the war of the Revolution are strikingly depicted by Mr. Madison. "The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man; on the necessary confidence in the public councils; on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States chargeable with this unadvised measure, which must long remain unsatisfied; or rather an accumulation of guilt, which can be expiated no otherwise than by a voluntary sacrifice on the altar of justice, of the power which has been the instrument of it."[1]

The States are also forbidden to make any thing but gold and silver coin a legal tender in payment of debts. The Constitution virtually places the control of the whole subject of money and the currency with the general government. The States have, indeed, established banks and authorized them to issue notes for circulation, but it has been by sufferance, and not by Constitutional authority. The general government, in the establishment of national banks, have assumed the exercise of the power which it was manifestly the intention of the Constitution they should possess.

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[1] Federalist, No. 44.

While the power to coin money is among the powers of Congress mentioned in Section 8, nothing is said as to the power of Congress to emit bills of credit, or to make any thing but gold and silver a legal tender. These powers, have, however, been considered as belonging to Congress, and both have been exercised. The United States notes now in circulation as money, known as "greenbacks" or "legal tenders," are bills of credit, and they would be such even if they were not required by law to be received in payment of debts.

The States as well as the general government are prohibited from passing any bills of attainder or *ex post facto* laws. There would be no propriety in allowing it to the former, if prohibited to the latter. Very wisely such laws are entirely prohibited.

No State can pass laws impairing the obligation of contracts. The obligation here spoken of is legal, not moral. "The spirit of the provision is this: A contract which is legally binding upon the parties at the time and place it is entered into by them, shall remain so, any law of the States to the contrary notwithstanding."[1]

Under this clause the States are clearly prohibited from passing bankrupt laws, which should impair the obligation of contracts made antecedently to their passage. The Supreme Court has decided, however, that the States may pass laws operating upon future contracts between their own citizens.

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[1] Tiffany, p. 217.

But this prohibition does not apply to the general government. The States can not pass laws impairing the obligation of contracts, but Congress may establish uniform laws on the subject of bankruptcies throughout the United States. "The general government has jurisdiction over all persons and property within the United States, to execute the plenary power and authority of the nation in respect to all subjects committed to its jurisdiction. It can determine upon what conditions and in what degree individuals may be released from the complete fulfillment of their contracts. That is, as the supreme authority upon that subject, Congress can by law determine the limit of legal obligation arising out of every species of indebtedness, and can prescribe the manner by which a party should proceed to obtain legal absolution of his debts."[1]

The term, contract, is made to include *grants*, which are contracts that have been executed. A grant made by a State legislature is irrevocable. Whenever a law is in its own nature a contract, and absolute rights have vested under it, a repeal of that law can not divest those rights, or annihilate or impair the title so acquired.[2]

If a charter of a bank, which has been incorporated by a State, should prescribe the manner in which the bank should be taxed, the State could not subsequently alter the mode of taxation, not even if meanwhile the State should have adopted a new Constitution prescribing the manner in which banks should be taxed.

So a charter of a college is a contract which the legislature of a State can not annul or impair. The State of New Hampshire attempted to change the charter of Dartmouth College, transferring the government of the institution from the old charter trustees to new trustees appointed under the legislative act. But the action of the legislature was declared by the Supreme Court to be unconstitutional.

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[1] Tiffany, p. 217. [2] Story.

Clause 2.—*No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.*

The authority to levy duties on goods imported properly belongs to the general government. The exercise of this power by the several States, prior to the adoption of the Constitution, was one of the chief causes of the overthrow of the Articles of Confederation. The whole power is now vested in Congress, and the States are by this clause prohibited from laying any duties except with the consent of Congress, and the revenue obtained in such case must be paid into the treasury of the United States.

The object of inspection is to secure a certain standard of excellence in commodities offered for sale, so that purchasers may not be imposed upon. An inspector is appointed under State law, whose duty it is to examine flour, pork, etc., and certify as to its quality. If it comes up to the required standard he stamps or brands the cask or package accordingly. Sometimes the inspector is paid by the city which appoints him, and sometimes his compensation is obtained by means of fees. Thus in Ohio the inspector of refined oil receives from six to ten cents a barrel for inspecting it. To prevent the State from receiving any revenue from this source, the Constitution requires that all fees beyond the cost of inspection shall be paid into the national treasury.

A State can not lay duties on imports or exports indirectly. Maryland once required all importers of foreign goods, and those selling the same in the original package, to take a license from the State, for which a fee of fifty dollars was to be paid. The Supreme Court decided that the law requiring this was unconstitutional, because it virtually levied a duty on the articles imported.

The Constitution in no other clause refers to taxation of any kind by State authority. But it everywhere recognizes the existence of the States as governments, and thus presupposes their power to levy taxes. For the support of its local government a State may tax its citizens, but it may not levy duties on imports, save with the consent of Congress, and for inspection purposes. And the Supreme Court has decided that a State can not levy a tax that shall in any way obstruct the legislation of the general government. Thus a State can not tax United States bonds or Treasury notes, or a bank chartered by the general government, except as provision is made for such State taxation by Congress; while the United States may levy a tax upon State bonds, or banks chartered by the States. When Congress tax the chartered institutions of the States they tax their own constituents; and such taxes must be uniform. But when a State taxes an institution created by Congress it taxes an instrument of a superior and independent sovereignty, not represented in the State legislature. (Story.)

Duties on tonnage are duties on ships. A ship that can carry five hundred tons of freight is said to be of five hundred tons burden. Where duties are levied upon ships, it is in proportion to their capacity, or the amount of freight they can carry. If the States are prohibited from raising a revenue from goods imported, they should also be prohibited from taxing the ships in which the goods are brought.

The other prohibitions in this clause refer to matters of national sovereignty. The whole control of questions relating to peace and war, treaties, alliances, etc., is placed in the general government; and nothing can be done by the States in these matters except under its direction. It has been seen that there are implied as well as express prohibitions on the powers of the States. Thus "no State can control, or abridge, or interfere with the exercise of any authority under the national government. And it may be added that State laws, as, for instance, State statutes of limitations, and State insolvent laws, have no operation upon the rights or the contracts of the United States." (Story.)

ARTICLE II.

THE EXECUTIVE DEPARTMENT.

Sec. 1, Clause 1.—*The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:*

From the Declaration of Independence to the time when the Constitution went into operation, there had been no Executive Department. In the Convention there was no difference of opinion as to the propriety and necessity of establishing such a department distinct from the Legislative. There was not the same unanimity as to the other questions, viz., whether the power should be vested in a single person, what should be the term of office, how the Executive should be chosen, and whether the office should be held a second time by the same person or persons. The vote in the Committee of the Whole was "That a national Executive be instituted, to consist of a single person, to be chosen by the national legislature (Congress) for the term of seven years." Subsequently the Committee of Detail reported the same clause, with the addition that he should not be elected a second time. Repeated efforts were made in the Convention by the delegates from Pennsylvania, to change the mode of election, so that the Executive might be elected by the people, or by electors, instead of by Congress; but only two States voted for the change. It was then referred to the Committee of one from each State, appointed to report on the unfinished parts of the Constitution, who reported it nearly as it was finally adopted.

There is no difference of opinion at the present time in regard to the importance of unity in the Executive. All are agreed that this power must be lodged in the hands of one man. To divide responsibility is to introduce feebleness. Every government should be administered with firmness and vigor. When laws are enacted they must be executed. The maxim that that government is best which governs least, is not true. That government is best which is so promptly and wisely administered that there will be little disposition to violate or evade the law. Republics are often affirmed to be feeble of necessity; but there is no inconsistency between a republican government and great firmness and energy of administration.

The Executive power "shall be vested," that is, *is* vested. The President duly elected has the power by the Constitution, without any law conferring it on him. The power is vested in the President alone; not in him and his Cabinet. In some of the States the Executive power is exclusively in the Governor; in others the joint action of the Governor and Council is required. The Executive power is not defined in the Constitution. Whatever it is, it is vested in the President. The Constitution authorizes him to do some things which do not necessarily belong to him as President. Thus he has a qualified negative on the legislation of Congress; with the advice and consent of the Senate he can make treaties; he is Commander-in-Chief of the Army and Navy. But whatever else may belong to the Executive Department, this does, that the President should see that the laws are executed.

We have seen that the Convention that framed the Constitution decided in Committee of the Whole that the term of office of the President should be seven years, and that he could not hold the office a second term. Both these provisions were subsequently changed; the term of office being four years, and the restriction to a single term having been stricken out, so that the people may elect the same man to the Presidency as many times as they please.

From the adoption of the Constitution to 1840, each successive President was a candidate for re-election, and five were elected a second time, viz., Washington, Jefferson, Madison, Monroe, and Jackson. John Adams, John Quincy Adams, and Martin Van Buren were nominated for a second term, but not elected. Since 1840 no President has been nominated for re-election except Mr. Lincoln in 1864, and General Grant in 1872, who were both elected. Thus seven Presidents have been elected a second time, three have been candidates for a second term, but have failed of an election, and six have not been re-nominated. No President has been a candidate for a third term.

The question of one presidential term has been much agitated. It is doubtful whether the Convention acted wisely in reducing the length of the term from seven years to four, and in striking out the clause forbidding a re-election. "The election of a supreme executive magistrate for a whole nation, affects so many interests, addresses itself so strongly to popular passions, and holds out such powerful temptations to ambition that it necessarily becomes a strong trial to public virtue, and even hazardous to the public tranquillity. * * This is the question that is eventually to test the goodness, and try the strength of the Constitution."[1]

Besides the excitement attending the election of the executive head of a great nation, which is so great that Mr. Paley condemns all elective monarchies, and thinks nothing is gained by a popular election worth the dissensions, tumults, and interruptions of regular industry, with which it is inseparably attended, there is the unfavorable influence on the President himself. It is natural that he should desire the approbation of the people as manifested by a re-election. But the danger is that this desire may tempt him to shape his administration so as to secure a renomination.

Clause 2.—*Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.*

The President and Vice-President are to be chosen by Electors, but the manner in which the Electors are to be appointed is left to the legislature of each State. "The Electors were at first chosen in four different modes, viz., by joint ballot of the State legislatures, by a concurrent vote of the two branches of the legislature, by the people of the State voting by general ticket, and by the people voting in districts. This latter mode was evidently that which gave the fairest expression to public opinion by approaching nearest to a direct vote. But those States which adopted it were placed at the disadvantage of being exposed to a division of their strength and neutralization of their vote; while the Electors chosen by either of the other methods voted in a body on one side or the other, thus making the voice of the State decisively felt. This consideration induced the leading States of Massachusetts and Virginia, which originally adopted the district system, to abandon it in 1800."[1]

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[1] Kent, I, p. 273.

The election in 1844 was the first in which the electoral vote in no State was divided. In 1860, New Jersey divided her vote; and in 1872 the Democratic votes were scattered, as Mr. Greeley, the candidate, had died. With these exceptions, all the Electors in any given State have since 1844 voted for the same candidates, and the President and Vice-President have received the same number of votes.

The Constitution determines the number of Electors. Whatever may have been the mode of choosing them, whether by the people or the legislature, it has been the practice to take one from each Congressional district, and two from the State at large. No qualification is required for an Elector except the negative one, that he shall not hold an office of profit or trust under the United States.

The third clause has been abrogated by an Amendment which was proposed by Congress in December, 1803, and having been ratified by the requisite number of States, became valid as a part of the Constitution in September, 1804. This clause will be found in the note.[1] The Amendment substituted for it is Article XII of the Amendments, and is as follows:

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[1] Lanman's Dictionary of Congress, p. 427.

The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and

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[1] **Clause 3.**—The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

According to the original clause the Electors were to vote for two persons without designating either as President or Vice-President. The one who had the greatest number of votes, provided that number was a majority of all the votes cast, was to be the President, and the other the Vice-President. If two had the same number, being a majority, the House of Representatives was to choose one of them for President. If no one had a majority, the House of Representatives was to choose a President from the five highest.

The chief points of difference between the methods are these two: according to the Amendment each Elector votes for President as such, and also for Vice-President; and if the election goes to the House of Representatives, the choice is from the *three* highest, instead of from *five*, as was provided in the original article.

At the first election General Washington was voted for by each of the Electors, 69 in number. Mr. John Adams, who became Vice-President, as having the next highest number of votes, received only 34; the remaining 35 votes having been divided among ten candidates.

At the second election, in 1792, General Washington was again elected unanimously, receiving 132 votes.[1] Mr. Adams was re-elected Vice-President, receiving 77 votes, a majority of the whole.

At the third election, in 1796, Mr. Adams was elected President, receiving a small majority of the votes; and Mr. Thomas Jefferson became Vice-President, though he had not a majority.

At the fourth election, in 1800, Messrs. Jefferson and Burr, who belonged to the same political party, had the same number of votes, being a majority of the whole; and thus the choice devolved upon the House of Representatives. There were sixteen States, of which eight voted for Jefferson, six for Burr, and two were divided. They continued to vote thus for thirty-five ballotings, occupying seven days, nominally without adjournment. On the thirty-sixth ballot, the two divided States voted for Jefferson, and so he became President, and Aaron Burr Vice-President. It was this difficulty that led to the amendment of the Constitution, which Amendment was ratified before the fifth election in 1804.

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[1] James Monroe in 1820, received all the Electoral votes but one.

The election of President has devolved on the House of Representatives in one other case. In the fall of 1824, Andrew Jackson received 99 Electoral votes, John Quincy Adams 84, William H. Crawford 41, and Henry Clay 37. General Jackson lacked 32 of a majority, and the choice devolved on the House of Representatives. As the choice must be from the three highest, Mr. Clay could not be voted for. Of the twenty-four States, thirteen voted for Mr. Adams, seven for General Jackson, and four for Mr. Crawford. John C. Calhoun, the candidate for Vice-President on the ticket with General Jackson, was elected, having received 182 votes. In this case the President and Vice-President belonged to different political parties.

Once only has the choice of Vice-President devolved on the Senate. In the fall of 1836, Martin Van Buren received 170 votes out of 294 for President, and was elected: Richard M. Johnson failed of an election to the Vice-Presidency by one vote, having received 147. He was chosen by the Senate.

Practically the people vote for President and Vice-President, and it is known who is to be the next President long before the Electoral College convenes. Thus the voting by the Electors has become a mere form, though it was not so intended. Various plans have been suggested in respect to the mode of electing the President, but Congress has never yet proposed an amendment since the Constitution was altered in 1804. By the present mode a candidate may have a large majority of the Electoral votes, and yet be in a decided minority so far as the popular vote is concerned.

By the original article a Vice-President could not be chosen till the President had been chosen; a failure in the choice for the first office would involve therefore a failure in the second also. The Amendment avoids this difficulty, by providing that the Senate may choose a Vice-President if no one has been chosen by the Electoral vote. In the failure by the House of Representatives to choose a President by the fourth of March, the Vice-President already chosen by the Senate will act as President.

It is usual for the two Houses to meet in the House of Representatives, when the votes are opened by the President of the Senate, and handed to the tellers (one from the Senate and two from the House), who count the votes and announce the result. In February, 1865, Congress passed the twenty-second joint rule, by which the vote of no State should be counted if objected to by either House. This feature of the rule was not enforced in 1865 or 1869, but was in 1873, the Senate objecting to the votes from Arkansas, and three votes for Mr. Greeley from Georgia. Before 1877 it was repealed by the Senate. In January, 1877, an act was passed, applicable to that election only, that no vote of a State should be rejected except by concurrent vote of both Houses, and that all cases of two or more sets of votes from the same State should be referred to a Commission of fifteen, composed equally of Senators, Representatives, and Judges of the Supreme Court. The cases referred were those of Florida, Oregon, South Carolina, and Louisiana. and were all decided by a vote of eight to seven, and Mr. Hayes was elected by a vote of 185, Samuel J. Tilden having 184.

Clause 4.—*The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.*

After the Constitution had been ratified by the requisite number of States, the Continental Congress appointed the first Wednesday in January, in 1789, as the day for choosing Electors, the first Wednesday in February for the Electors to assemble and vote for President, and the first Wednesday of March as the day on which to commence proceedings under the new Constitution.[1] The first Wednesday of March was the fourth day of the month, in the year 1789.

In 1792 an act was passed requiring that the Electors be appointed within thirty-four days preceding the first Wednesday in December; that the Electors should meet and give their votes on the first Wednesday in December; that the votes should be counted on the second Wednesday of February; and that the Presidential term of four years should commence on the fourth day of March. All these provisions remain in force, except that as to the time of choosing Electors. By act of Congress of January, 1845, they are to be chosen on the Tuesday next after the first Monday in November. Each State may provide for filling any vacancy which may occur in its college of Electors. By the Amendment to the Constitution, made in 1804, if the House of Representatives should not elect a President by the fourth of March, the Vice-President becomes President: the fourth of March is thus virtually made by the Constitution, as well as by statute, the day when a new Presidential term begins.

The Electors in each State make and sign three certificates of all the votes given by them, one of which is to be forwarded by special messenger to the President of the Senate at Washington, one is to be sent to him by mail, and one is to be delivered to the judge of that district in which the Electors meet.

Clause 5.—*No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of*

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[1] Journal Cont. Cong., XIII, 105.

President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

At the time of framing the Constitution, a number of men of foreign birth were among the most prominent in the nation, some of them being members of the Convention. This exception in favor of those who were citizens at the time the Constitution was adopted was a mark of respect to them.

A residence abroad on official duty would not incapacitate one from holding the office of President. Mr. Buchanan had been Minister to England just prior to his election to the Presidency in 1856.

Clause 6.—*In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.*

Until near the close of the Convention that framed the Constitution, nothing had been said of a Vice-President. The Senate had been authorized to choose their own presiding officer, and in case of the death or removal of the President of the United States, the President of the Senate was to become President. The Convention had decided that the President should be elected by Congress; but there was difficulty in arranging the details, and the Committee of one from each State finally reported a new plan, providing for an election of President by means of Electors appointed in the several States. This plan seemed to render desirable the election of a Vice-President, and thus the Constitution made provision for such an officer.

We have seen that, according to the Amendment adopted in 1804, the Senate may choose a Vice-President immediately, if there has been no election by the people. If, therefore, by possibility the House of Representatives, when the election devolves on them, should fail to elect a President by the fourth of March, the Vice-President would become President.

Congress has provided by law[1] that in case of the removal, death, resignation, or inability of both President and Vice-President, the President *pro tempore* of the Senate, and in case there is no such President, the Speaker of the House of Representatives, shall act as President until the disability be removed, or a President be elected. If the Vice-President becomes President, he holds the office during the remainder of the term for which the President was elected; if the President *pro tempore* of the Senate, or the Speaker of the House, should be called to act as President, he would act till a new President could be elected. Such special election would be held at the same time of the year as the regular election.

The act of 1792 provides that "*whenever* the offices of the President and Vice-President shall both become vacant," a special election shall be held. This would include the case of non-election at the regular time, for which the Constitution does not provide; hence the constitutionality of that part of the act has been doubted.

As the Constitution seems to distinguish between members of Congress and civil officers, in Article I, Section 6, Clause 2, and as the President must "commission all the officers of the United States" (Article II, Section 3), it has been maintained by some that neither the President of the Senate nor the Speaker of the House is an "officer" in the meaning of the Constitution; and, therefore, that the act of 1792 has no constitutional authority, as the Constitution authorizes Congress to declare what "officer" shall act as President. This objection was made when the bill was under discussion in the House of Representatives, and that body substituted the Secretary of State in place of the President of the Senate and Speaker of the House; but as the Senate refused to concur in this substitution, the House receded from its amendment, and the bill was passed as it now stands.

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[1] March 1st, 1792.

A vacancy in the office of President has occurred three times, and in each instance by the death of that officer. General William Henry Harrison died April 4th, 1841, just one month after his inauguration, and was succeeded by John Tyler, April 6th. General Zachary Taylor died July 9th, 1850, and was succeeded by Millard Fillmore, July 10th. Abraham Lincoln was assassinated on the night of April 14th, 1865, and was succeeded by Andrew Johnson, April 15th.

Clause 7.—*The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.*

The salary of the President was made twenty-five thousand dollars a year, and that of the Vice-President five thousand dollars, by act of Congress September 24th, 1789, and again February 18th, 1793. The former continued the same to the third of March, 1873, when it was raised to fifty thousand. The salary of the Vice-President was raised to eight thousand dollars in 1853, to ten thousand March 3d, 1873, and reduced to eight thousand January 20th, 1874. A furnished house is provided for the President. The salaries are paid monthly.

Clause 8.—*Before he enter on the execution of his office, he shall take the following oath or affirmation:*

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

The oath is administered to the President by the Chief Justice of the Supreme Court, in connection with the inauguration ceremonies, which are held at noon on the fourth of March.

After the death of President Harrison, Mr. Tyler took the oath prescribed in the Constitution, "although he deemed himself qualified to perform the duties and exercise the powers and office of President without any other oath than that which he took as Vice-President." The same was done by Mr. Fillmore and Mr. Johnson. It is said that the Cabinet of President Harrison proposed that Mr. Tyler be styled "Acting President," but the proposition was declined. The Constitution says the powers and duties of the office "shall devolve on the Vice-President" in case of the removal of the President, but that Congress shall declare what officer shall "act as President," when there is neither President nor Vice-President. There appears to be no reason, then, for using the style "Acting President" in the case of the Vice-President succeeding to the office, whatever might be done if the President of the Senate or the Speaker of the House should be called to the Executive chair.

Sec. 2, Clause 1.—*The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power* *to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.*

Most writers on the Constitution have regarded the authority to command the army and navy as necessarily belonging to the Executive Department. This is the opinion of Story, and Kent, and Duer. Mr. Tiffany thinks, however, that the duties of the President as military head of the nation may be contemplated as distinct from those devolving on him as the chief magistrate. "The powers and duties of the President as commander-in-chief of the army and navy are separate and distinct from his powers and duties as the simple Executive head of the nation; and neither of those functions of the presidential office derives any strength from the other. As the chief Executive of the nation he takes no authority from the military department of his office; and as commander-in-chief he gets no aid from the civil department of the same. That is, his authority as commander-in-chief is the same as it would have been, had it been an office separated from, and independent of, the office of President of the United States. Had the Constitution provided for the appointment of some other person than the presidential incumbent to that office, the powers and duties of the office would have been the same."[1]

Whatever may be true in theory, there are great practical advantages in making the President the military as well as the civil head of the nation.

The only reference in the Constitution to the heads of the executive departments is found in this and the following clauses. The language implies that such departments would be established, but the Constitution neither in Section 8, of Article I, nor elsewhere, specifies the power to establish them as one of the powers belonging to Congress. The heads of these departments are the advisers of the President. Collectively they are called his Cabinet. They have frequent meetings at which measures are discussed, and in addition their written opinions are given to the President whenever he requires them. The opinions of the Attorney-Generals fill a number of volumes.

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[1] Tiffany's Treatise, p. 340.

A reprieve suspends for a time the execution of a sentence, especially when the criminal has been sentenced to death. A pardon is a full release from the punishment which would otherwise be inflicted. The power to reprieve or pardon implies the possible imperfection of human justice. Circumstances may come to light after a trial which, had they been known before, would have secured a different result. This prerogative of mercy is found in all civilized governments, and it is properly lodged with the Executive. Our Constitution gives it to the President, except in cases of impeachment. "The power of impeachment will generally be applied to persons holding high offices under the government; and it is of great consequence that the President should not have the power of preventing a thorough investigation of their conduct, or of securing them against the disgrace of a public conviction by impeachment, if they should deserve it." (Story.)

The same writer thinks the President would have no authority to pardon in case of contempts; as it would tend to make the legislative bodies wholly dependent upon his good will and pleasure for the exercise of their own powers.

The language of the Constitution is that the President shall have power "to grant reprieves and pardons." For the meaning and use of the expression "to grant pardons," we are referred to the English law, which allowed the king as the sovereign to pardon before trial as well as after. Was this the intention of the framers of our Constitution? Judge Field, in giving the opinion of the Supreme Court in the case of Garland, said: "The power thus conferred is unlimited, with the exception stated; it extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment."

Mr. Tiffany views the matter differently. "To pardon or reprieve a man implies that he has become, in the eye of the law, the subject of punishment to be inflicted upon him. It implies that the law has pronounced him guilty, and denounced upon him the penalty. The Executive, as an officer of the law, can know nothing of the guilt or innocence of a party, or of his need of a reprieve or pardon, until his guilt has been judicially ascertained. No reprieve or pardon can, in law, be granted, until there be that from which a reprieve is needed, or for which a pardon is demanded."[1] "There may be cases as in rebellion or civil war where a large class of citizens may need, and public policy may require, an amnesty in their behalf. But such exigency addresses itself to the *legislative*, not to the *executive* department of government."[2]

This seems to have been the view of Congress when, by act of July, 1862, they authorized the President to extend pardon and amnesty by proclamation to those in rebellion against the government, with such conditions as he might deem expedient. On the third of December, 1863, President Lincoln issued an amnesty proclamation, referring to the action of Congress. Other proclamations were issued by Mr. Lincoln and Mr. Johnson prior to the repeal of the section authorizing such offers of amnesty. The latter, however, issued proclamations of like character after the repeal—January 19th, 1867—giving the Constitution as his authority, in answer to an inquiry made by the Senate.

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[1] Tiffany, p. 335. [2] Ibid p. 338.

President Fillmore granted a conditional pardon to a man convicted of murder and sentenced to be hung. The condition was that he be imprisoned during his life. It was commuting the sentence of death to imprisonment for life. The Supreme Court held that such a pardon was within the power of the President.

Clause 2.—*He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the Courts of law, or in the heads of Departments.*

The "advice and consent" of the Senate, both in making treaties and in appointments to office, is, in practice, consent rather than advice. The treaty is made and then sent to the Senate for their concurrence. A nomination is made by the President and the Senate acts upon the question of confirmation.

A treaty is an agreement or contract between two nations. In Great Britain the power to make treaties is in the Crown. In a republic the people may place it where they choose. The wisdom of giving it to the President and Senate will hardly be questioned. To give it to the President alone would intrust to him more power than is consistent with the nature of our government. It could not well be placed in Congress because of the promptness and secrecy often necessary.

By requiring the concurrence of two-thirds of the Senate with the President the Constitution has provided as ample a guaranty as could well be required for the maintenance of the rights and honor of the country.

While the power to make treaties is general and unrestricted it is not to be so construed as to destroy the fundamental laws of the land. "A treaty to change the organization of the government, to annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers, would be void; because it would destroy what it was designed merely to fulfill, the will of the people" (Story).

Cases may arise where a given end may be reached either by a treaty or by ordinary legislation. Thus, Congress authorized the admission of the Republic of Texas in either of two modes—by treaty, to be negotiated by the Executive with that Republic; or by the acceptance, on the part of Texas, of certain terms specified in the joint resolution of the two Houses. "The annexation was made, in fact, by the acceptance of the propositions of Congress. So that the treaty was made directly with Texas by Congress, and not by the President with the advice and consent of two-thirds of the members of the Senate, as the treaty-making power."[1]

If a treaty made by the President and Senate with a foreign power involve the payment of money, can Congress exercise any discretion as to the appropriation? This question came up during the administration of President Washington, and was debated with great earnestness in the House of Representatives. The treaty was one made by Mr. Jay with Great Britain, and in some of its features was obnoxious. The House by a large majority passed a resolution, that whenever a treaty required laws to be passed to carry it into effect, they had a constitutional right to deliberate and determine the propriety or impropriety of passing such laws, and to act thereon as the public good should require. Shortly after, however, Congress passed a law to carry the treaty into effect.

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[1] Farrar, p. 333.

Says Chancellor Kent, "If a treaty be the law of the land, it is as much obligatory upon Congress as upon any other branch of the government or upon the people at large, so long as it continues in force and unrepealed."[1]

It is claimed that whenever *territory* has been acquired by treaty, Congress has been consulted beforehand; that in the three great cases of the purchase of Louisiana, of Florida, and of California, Presidents Jefferson, Monroe, and Polk consulted Congress beforehand to ascertain its wishes in the matter, thus apparently recognizing the authority of the House of Representatives to make or refuse the necessary appropriations.

As the Constitution (Article VI.) expressly makes treaties, no less than the statutes enacted by Congress, to be the supreme law of the land, might not a treaty-stipulation for the payment of money be construed to be an appropriation made by law, according to the meaning and intent of the Constitution? If so, the money might be lawfully drawn from the treasury, even if Congress made no appropriations.

It is evident, however, that the framers of the Constitution did not contemplate the purchase of territory as belonging to the treaty-making power, and President Jefferson at the time Louisiana was purchased admitted that the authority to make the purchase was not given to the government in the Constitution. As, prior to the purchase of Alaska, Congress has always been consulted whenever it was proposed to enlarge our domain, and as there are grave doubts whether the acquisition of territory comes within the province of treaties, it seems desirable that in all such cases the consent of Congress should be obtained.

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[1] Vol. I, p. 256.

In framing a treaty the President acts through the Secretary of State, a foreign minister, or a plenipotentiary appointed for the purpose. The treaty is signed by the representatives of the two nations, and then submitted to the respective governments for their ratification. After the ratifications have been exchanged, the President issues his proclamation, making the treaty public, "to the end that it may be observed with good faith by the United States and the citizens thereof."

In discussing a treaty, as well as in considering a nomination, the Senate sit with closed doors. It is called going into Executive session. Two-thirds of the members present must concur in the ratification of a treaty, while a majority is sufficient to confirm a nomination to office.

Nominations are sent to the Senate by the President in writing. The nomination is by the President alone. The Senate can confirm the nomination or reject it, but they can not make the nomination. The wisdom of this mode of appointment is thus stated by Mr. Hamilton: "The blame of a bad nomination would fall upon the President singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the Senate; aggravated by the consideration of their having counteracted the good intentions of the Executive. If an ill appointment should be made, the Executive for nominating, and the Senate for approving, would participate, though in different degrees, in the opprobrium and disgrace."[1]

The Constitution provides that Ambassadors, other public ministers and consuls, and Judges of the Supreme Court, *must* be appointed by the President and Senate; but such "inferior officers" as Congress may designate, may be appointed by the President alone, by the courts, or by the heads of departments. It has not been determined who are, or who are not, "inferior officers;" but it may be considered settled that the heads of departments do not belong to this class. If Congress does not vest the appointment of any officer in the President alone, in the courts, or in the head of a department, then, as a matter of course, the President and Senate appoint, no matter how insignificant the office may be.

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[1] Federalist, No. 77.

The courts have been invested with very little power of appointment; but the heads of departments have had large power of this kind. Formerly, the Postmaster-General could appoint and remove all deputy postmasters. This gave him an enormous patronage, which was continually increasing. But the Thirty-seventh Congress, at its third session, enacted that the Postmaster-General should appoint those deputies only whose compensation is less than one thousand dollars a year, all others being appointed by the President.

While the Constitution makes provision for appointment to office, it says nothing in regard to removal from office. At the time the Constitution was under discussion in the States, its friends spoke of the consent of the Senate as no less necessary for the removal of an officer than for his appointment.[1] But in the First Congress the question came up in the House of Representatives, and was discussed at great length. In a bill establishing a Department of Foreign Affairs—now called the Department of State—it was provided that the Secretary might be removed by the President. The debate occurred on a motion to strike out this provision.

It was maintained on the one side that the power to appoint and the power to remove must go together; if the President could appoint only with the consent of the

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[1] "The consent of that body would be necessary to displace as well as to appoint."—Federalist, No. 77.

Senate, their consent must also be necessary to remove. On the other side it was held that appointing to office and removing therefrom were executive acts. If the Constitution had not associated the Senate with the President in the matter of appointments, Congress could not have given them that power; and as the Constitution had not conferred upon the Senate the power to unite with the President in removal, Congress was not authorized to associate them with the President in removing from office.[1] The bill, with the provision authorizing the President to remove from office, finally passed the House of Representatives by a vote of twenty-nine to twenty-two, and the Senate by a majority of two.[2] How strong was the opposition to giving such power to the President appears from the language of Mr. Sumter, of South Carolina, who said: "This bill appears, to my mind, so subversive of the Constitution, and in its consequences so destructive of the liberties of the people, that I can not let it pass without expressing my detestation of the principle it involves."[3]

"That the final decision of this question in favor of the executive power of removal was greatly influenced by the exalted character of the President then in office, was asserted at the time, and has always been believed; yet the doctrine was opposed, as well as supported, by the highest talents and patriotism of the country. The public, however, acquiesced in the decision; and it constitutes, perhaps, the most extraordinary case in the history of the government of a power conferred by implication on the Executive by the assent of a bare majority of Congress, which has not been questioned on many other occasions." (Story.)

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[1] Annals of Congress I, p. 463.

[2] When the question first came before the Senate, some members were absent, and the Senate were equally divided, the Vice-President giving the casting vote.—Pitkin's History, vol. II, p. 326.

[3] Annals of Congress I, p. 591.

For forty years after the adoption of the Constitution there were very few removals from office, except as a public necessity to secure greater efficiency in the discharge of official duty. Such, unquestionably, was the expectation when the Constitution was formed. Mr. Madison, in the debate referred to above, used the following language: "I contend that the wanton removal of meritorious officers would subject him (the President) to impeachment and removal from his own high trust."[1] "It can not be doubted," says Mr. Tiffany, "that the practice of creating vacancies by removals from office, without any reference to the fidelity or efficiency of those removed, or to the better qualifications or character of those who are appointed to their places, is a violation of both the letter and the spirit of the Constitution."[2]

But, although for many years men were appointed to office for their fitness, a change had taken place before the first half century had elapsed. In 1835, during the second term of General Jackson's administration, a Committee of the Senate, Mr. Calhoun Chairman, appointed to investigate the subject of "Executive Patronage," used the following language in their report: "It is easy to see that the certain, direct, and inevitable tendency of this practice is to convert the entire body of those in office into corrupt and supple instruments of power, and to raise up a host of hungry, greedy, and subservient partisans, ready for every service, however base and corrupt. Were a premium offered for the best means of extending to the utmost the power of patronage; to destroy the love of country and substitute a spirit of subserviency and man-worship; to encourage vice and discourage virtue; and, in a word, to prepare for the subversion of liberty and the establishment of despotism, no scheme more perfect could be devised. * * The question now is, not how, or where, or with whom, the danger originated, but how it is to be arrested; not the cause, but the remedy."[1]

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[1] Annals of Congress I, p. 497. [2] Treatise, p. 350.

Although bills had been introduced into Congress to limit the President's power of removal, no bill to that effect was passed until 1866. In July of that year it was enacted that "No officer in the military or naval service shall, in time of peace, be dismissed from service except upon and in pursuance of the sentence of a court martial to that effect, or in commutation thereof." This was under the administration of President Andrew Johnson. In March, 1867, an "Act regulating the tenure of civil offices" was passed, which provided that the President might suspend an officer during a recess of the Senate, reporting the same with the reasons for it to the Senate within twenty days after their assembling; if the Senate should concur in the removal, another person might be appointed. But if the Senate should not concur, the suspended officer was to resume his duties. This bill was vetoed by President Johnson, but passed over his veto by a large majority in each House. It was chiefly for violating the provisons of this act, in removing Secretary Stanton after the Senate had refused to concur in his suspension, that the House of Representatives brought articles of impeachment against the President.[2]

Thus, after more than three-quarters of a century, the legislative construction given to the Constitution in 1789, was reversed in 1867. In each case the action of Congress was doubtless largely influenced by their estimate of the character of the Executive. The question has never yet been the subject of judicial construction.

The frequent changes in office, and the appointment of men often sadly deficient in intellectual and moral qualifications, form one of the sources of official corruption. The subject of "Civil Service Reform" has been largely discussed within the last few years, and various plans have been suggested to remedy existing evils. Three things have been affirmed to be requisite in order to bring about a reform: a competitive examination of all candidates for subordinate offices; promotion to higher grades on the principle of service and desert; and a tenure of office during good behavior, or for a term of years.

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[1] Senate Doc., 2d Sess., 23d Cong., vol. 3, No. 109.

[2] This act was modified by act of April 5th, 1869.

Clause 3.—*The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.*

When an appointment has been made in the usual mode, that is, the President having nominated and the Senate having confirmed, the commission is not made out till the Senate have signified their concurrence. If the person nominated by the President is rejected by the Senate, of course no commission is issued. But when a vacancy is filled in the recess of the Senate, the President grants a commission, which continues in force until the end of their next session. If the President nominates to the Senate one whom he had thus appointed and commissioned, and the Senate confirms the nomination, a new commission is issued, and, if a bond had been given under the first appointment, a new one is required.

Suppose a vacancy had been filled by the President in the recess of the Senate, and the officer thus appointed should be nominated to the Senate at their next session, and be rejected; could the President, after the adjournment of the Senate, re-appoint the same person? Would this be a "vacancy" in the meaning of the Constitution? If the Senate have rejected an officer, the President should not appoint him to the same office. The consent of the Senate to an appointment is clearly required by the Constitution, and that instrument contemplates action by the President alone only when there is no opportunity to consult the Senate. If the Senate take no action upon a nomination, the President, whose duty it is to see that the laws are executed, must make the appointment himself. This occurred under the administration of President J. Q. Adams. President Monroe made a nomination which was rejected, and after the expiration of the session filled the vacancy by an appointment. President Jackson nominated a person whom the Senate rejected, and he subsequently renewed the nomination of the same person. The Senate laid the nomination on the table, and adjourned without taking further action on the subject. After the adjournment of the Senate, the President appointed the man. It would have been better if the Senate had acted upon the nomination. The nomination having been made the second time could again have been rejected. In that case the President would have felt compelled to make a different appointment.

Section 3.—*He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.*

It is customary for the President, at the beginning of each regular session, to send a *message* to Congress, which contains a summary of the reports from the heads of departments, and a general account of the operations of the government for the year, with such suggestions as he may deem expedient. Accompanying the message are the full reports of the various departments, and documents containing detailed information as to every branch of the government. The "Message and Documents" and "Executive Documents" fill annually a number of octavo volumes. The President also sends special messages from time to time, recommending such measures of legislation as he thinks the interests of the country require, or containing information requested by Congress.

President Washington delivered his first message to both Houses assembled in the Senate Chamber. He continued to deliver his messages in person at the opening of each session of Congress, during the eight years of his administration, and his example was followed by Mr. Adams. Each House appointed a committee to prepare a reply, which, when adopted by the House, was presented to the President. This was in accordance with the custom of England and other constitutional governments. Mr. Jefferson, however, preferred to send his message, to be read to each House by its clerk. There was no expectation of an answer. This custom has been followed to the present time.

The authority given to the President to convene Congress has been used on eight occasions. President Adams called an extraordinary session for May 15th, 1797, on account of the difficulties with France; President Madison, May 22d, 1809, and again May 24th, 1813 both because of difficulties with England; President Van Buren, September 4th, 1837, to consider the financial condition of the country; President Harrison, May 31st, 1841, for the same purpose; President Pierce, August 21st, 1856, because of the Kansas troubles; President Lincoln, July 4th, 1861, on account of the rebellion in the south; President Hayes, October 15th, 1877, for want of an appropriation for the Army. President Jefferson convened Congress October 17th, 1803, three weeks earlier than usual, because of the purchase of Louisiana, and the difficulties with Spain.

The House of Representatives has never been convened alone, but the Senate has often been, for executive business.

No case has yet arisen of disagreement between the two Houses in regard to the time of adjournment, and therefore the President has never had occasion to use the contingent power of adjourning them. In England the sovereign may at any time prorogue or dissolve Parliament.

The President is to receive ambassadors and other public ministers. Diplomatic intercourse with other nations is carried on through the Executive Department. Instructions to our foreign ministers, though bearing the signature of the Secretary of State, are always in the name and by the order of the President. To receive an ambassador or other public minister is to recognize the country from which he comes as belonging to the commonwealth of nations. The Southern Confederacy made great efforts to secure such recognition from Great Britain and France during the war of the rebellion.

The power to receive involves the power to refuse to receive, or to reject and dismiss. This may be done for reasons pertaining to the minister himself, as in the case of M. Genet, the French minister, whom President Washington requested France to recall in 1794, or on account of the relations of the two governments.

The President "shall take care that the laws be faithfully executed, and shall commission all officers of the United States." To see that the laws are executed is the great duty of the President. He is not to make the laws, or repeal them, save as the Constitution gives him a qualified negative in their enactment, but to take care that the laws are duly enforced. When the meaning of a law is judicially called in question, it is not the province of the President to decide as to the true meaning and intent of the statute; this belongs to the Courts. He may differ from the Supreme Court as to the interpretation of a law, or a clause of the Constitution, or he may think a statute unwise or inexpedient; still, whatever has been enacted in accordance with the forms prescribed by the Constitution, must be executed in good faith by the President. For this purpose he is clothed with great power; the army and navy are under his orders. Either directly or indirectly all executive offices are filled by men of his selection. It is his duty, therefore, to see that none are appointed to office but those who are honest and capable.

Section 4.—*The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.*

The other instances in which impeachments are alluded to in the Constitution are these: The House of Representatives shall have the sole power of impeachment; The Senate shall have the sole power to try impeachments; When the President of the United States is tried, the Chief Justice shall preside; In trials for impeachments, the Senate shall be on oath or affirmation, and the concurrence of two-thirds shall be necessary for conviction; Judgment shall not extend further than to removal from office, and disqualification to hold and enjoy an office of honor, trust, or profit under the United States; The party convicted may also be tried and punished according to law; The President has power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment; The trial of all crimes, except in cases of impeachment, shall be by jury.

While it is clear that the House of Representatives only can prefer articles of impeachment, and the Senate only can try impeachments, it is not clear who may be impeached. The present section prescribes a minimum punishment for all "civil officers" on conviction, but the Constitution nowhere defines "civil officers," nor does it say that others are not liable to impeachment. The term *civil* is here supposed to be used in distinction from *military* and *naval.* Some understand that members of Congress are not included under the designation "civil officers," as Section 3, Article II, provides that the President "shall commission all the officers of the United States." As members of Congress are not commissioned by the President it is inferred that they are not "officers" in the sense of the Constitution.

Articles of impeachment were brought against William Blount, United States Senator from Tennessee, in 1797. The day after the resolution to impeach passed the House, Mr. Blount was expelled from the Senate, by a vote of twenty-five to one. Action, however, was taken by both Houses for going on with the impeachment. Articles of impeachment were agreed to January 29th, 1798, and the Senate summoned Mr. Blount to appear and answer in the December following. At that time the Senate formed itself into a Court, and counsel for the defendant appeared and filed a plea that the Senate could not impeach one who was not *then a Senator*, and who was not an *officer* of the United States when the offenses charged were committed. The question of jurisdiction was then argued, and the court decided,[1] fourteen to eleven, that they had no jurisdiction, and so the case ended. The decision is supposed to have been on the ground that a Senator is not a "civil officer" of the United States.

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[1] Annals of Congress, 5th Congress.

It appears that all "civil officers" may be impeached for "high crimes and misdemeanors," and, if convicted, they *shall* be removed from office, and *may* be disqualified for any office under the government. It does not appear that they may not be impeached for other and lesser offenses, and punished in the same manner, or otherwise, not exceeding that. Military and naval officers, and even persons not in office may be impeached; at least the Constitution does not forbid it.

"It was the opinion of the framers and early administrators of our government, that all the civil officers were impeachable for minor malfeasances in office, not amounting to high crimes or misdemeanors at law, and punishable in any manner not exceeding removal from, and disqualification for, office."[1] Mr. Madison's language in regard to removal from office has already been quoted: "The wanton removal of meritorious officers would subject him (the President) to impeachment and removal from his high trust."

Besides the case of Senator Blount, there have been six instances of impeachment. The first was that of Judge John Pickering, of the District Court of New Hampshire, in March, 1803. The second was that of Judge Samuel Chase, of the Supreme Court, in March, 1804. James H. Peck, District Judge of Missouri, was impeached in April, 1830; West H. Humphries, District Judge of Tennessee, in May, 1862; Andrew Johnson, President of the United States, in February, 1868; and William W. Belknap, Secretary of War, in March, 1876.

The charge against Senator Blount was an attempt to carry into effect a hostile expedition in favor of the English against the Spanish possessions in Florida and Louisiana, and to enlist some of the Indian tribes in the same.

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[1] Farrar, p. 436.

Judge Pickering was charged with great irregularities on the bench, as well as gross intemperance. He was undoubtedly insane at the time he was impeached, and did not appear in person or by counsel. The decision, on March 12th, 1804, was that he was guilty of the charges, by vote of nineteen to seven. By a vote of twenty to six he was removed from office.

Judge Chase was charged with improper conduct on the bench, as manifesting partiality, injustice, and oppression. There were eight articles of impeachment, on two of which eighteen Senators voted "guilty," and sixteen "not guilty;" on the other six articles a majority voted "not guilty." He was, therefore, acquitted on every article. John Randolph was the leading Manager on the part of the House to conduct the case.

Judge Peck was impeached for an abuse of his judicial power in punishing Mr. L. E. Lawless, an attorney, for contempt. The offense of Mr. L. was the publishing in a newspaper a criticism on a decision by Judge Peck, and he was punished by imprisonment for twenty-four hours, and suspension from the bar for eighteen months. The decision was in favor of Judge Peck, twenty-one Senators voting "guilty," and twenty-two "not guilty." Mr. James Buchanan was the Chairman of the Managers.

Judge Humphries was impeached for aiding the rebellion, for acting as Judge of a Confederate Court, for ill-treating loyal men, confiscating their property, etc. He did not appear in person or by counsel. The Senate pronounced him "guilty" on each of the seven articles, and by a unanimous vote he was removed from office, and disqualified from holding any office of honor, trust, or profit, under the United States. Mr. John A. Bingham was the Chairman of the Managers.

President Johnson was impeached for removing Secretary Stanton from office in alleged violation of the act regulating the terms of certain civil offices, passed March 2d, 1867, and for affirming that the Thirty-ninth Congress was no Congress, etc., etc. The President had suspended the Secretary in August, 1867, but the Senate voted in January, 1868, not to concur in the suspension. In February the Secretary, who had resumed his office, was removed by the President. Three days afterwards the House of Representatives passed resolutions of impeachment. The articles were read to the Senate March 4th, and the trial ended May 26th. Thirty-five Senators voted "guilty," and nineteen "not guilty." Mr. John A. Bingham was the chief manager.

Secretary Belknap was impeached for "high crimes and misdemeanors in office" in receiving money for an appointment to the post of trader at Fort Sill. The resolution of impeachment was adopted March 3d, but the trial did not end till August 1st. The question of jurisdiction was raised, as the Secretary had resigned before the House took action, but the Senate decided, thirty-seven to twenty-nine, that they had jurisdiction. The trial resulted in an acquittal, thirty-seven voting "guilty," and twenty-five "not guilty." The votes were nearly the same as to the guilt of the defendant and as to the jurisdiction of the Senate. Mr. Scott Lord was the chief manager.

ARTICLE III.

THE JUDICIARY.

Section 1.—*The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensa-*

tion which shall not be diminished during their continuance in office.

The Judiciary is the third of the three great departments of the general government. The Constitution itself provides for one Supreme Court, but leaves to Congress to determine how many inferior Courts should be established. The *organization* of the Supreme Court is also left to Congress.

At the first session of Congress, in 1789, an act to organize the Judiciary was passed. Two inferior Courts were established, called the Circuit Court and the District Court. While there were thus three distinct Courts, there were but two kinds of Judges—Supreme and District. The country was divided into thirteen districts, in each of which a Judge was to be appointed, who was to hold a Court four times in each year. These districts were grouped into three circuits, in each of which a Circuit Court was to be held twice a year, to be attended by two Supreme Judges and the District Judge.[1] The Supreme Court consisted of a Chief Justice and five Associate Justices. This Court was to hold two sessions each year at the seat of government.

As the population of the country increased, and new States were admitted into the Union, the number of inferior Courts was increased, till, in 1863, there were ten Circuits and about forty Districts. By the act of March 3d, 1863, the Supreme Court was composed of a Chief Justice and nine Associate Justices, the whole equal to the number of Circuits. But the act of July 23d, 1866, provided that no vacancy should be filled till the number of Associate Justices was reduced to six.

From 1793 till 1869 the Circuit Court was composed of one Judge of the Supreme Court (instead of two, as at first) and the District Judge. In 1869 an act of Congress was passed creating Circuit Judges, one for each of the nine Circuits. The same act made the Supreme Court to consist of a Chief Justice and eight Associate Justices, corresponding to the number of Circuits.

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[1] In February, 1801, an act was passed providing for the appointment of sixteen Circuit Judges, but the act was in force but a single year, having been repealed in March, 1802.

We have seen that in both the legislative and the executive departments the term of office is limited: the Representatives being elected for two years, the Senators for six, and the President for four. But in the judicial department the office is to be held *during good behavior*. This is virtually for life; for a Judge of the United States can be removed from office only by impeachment. As the Judges are not elected by the people, but appointed by the President and Senate, they would be virtually dependent on the other departments of the government unless their term of office was during good behavior. If the President, or the President and Senate, could remove them at pleasure, or if they were appointed for a limited term, the Judges could not be truly independent. It was the purpose of the Constitution to make this department co-ordinate with the others, and with no more dependence upon them than they should have upon it. The independence of the Judiciary is quite as important in a republic as in a monarchy.

All the plans submitted to the Convention contained this provision, that the Judges should hold their offices during good behavior. While Messrs. Randolph, Pinckney, Patterson, and Hamilton differed as to many other things they agreed entirely as to the term of office of the Judges. The practical working of the system has been such as to commend it to the people. The Judges, made thus independent of the other departments of the government, and removed from the fluctuations of popular opinion, have discharged the duties of their high trust with firmness and dignity. In some instances men have been appointed to the bench who had previously been intense political partisans; but with scarcely an exception they have laid aside party feeling when entering upon office, and as Judges have devoted themselves faithfully and conscientiously to their appropriate duties of interpreting and applying the laws and the Constitution.

In 1855 a Court of Claims was established, which has jurisdiction of claims against the government founded upon a law of Congress, on any regulation of an executive department, or any contract, express or implied, with the government of the United States. Before the organization of this Court, those who had claims against the government which were not allowed by the departments had no remedy but to petition Congress. This devolved a great deal of labor upon the members of Congress, while it was still difficult to adjust the claims.

This Court consists of five Judges, of whom one is Chief Justice, who hold their offices during good behavior. Their annual session commences at the same time with that of the Supreme Court, on the first Monday of December.

There is also a Supreme Court of the District of Columbia, consisting of a Chief Justice and four Associates, who hold their offices during good behavior. Any one of these Justices may hold a District Court for the District of Columbia, with the same powers and jurisdiction as are exercised by the other District Courts of the United States.

Supreme and District Courts are established in the Territories, but they are not considered as an integral part of the Judiciary of the United States. They are established by Congress in virtue of the general sovereignty which exists in the general government over the Territories. The Judges are usually appointed for four years, unless sooner removed.

The general Judicial system of the United States consists, then, of three grades of Courts—the Supreme, the Circuit, and the District. There are also three grades of Judges, corresponding to the Courts. The Supreme Court is held by the Supreme Judges, and the District Court by the Judge for the District. But the Circuit Court may be held by a Supreme Judge, the Circuit Judge, or the District Judge, or by any two of them. The Court for the District of Columbia is special for that locality, and the Court of Claims is special in regard to the cases brought before it.

The compensation of the Judges of the United States Courts shall not be diminished during their continuance in office. The propriety of this provision is obvious. If Congress could reduce their salaries at pleasure it would place them at the mercy of the legislative department, and thus destroy their independence.

When the Courts were organized in 1789, the salary of the Chief Justice of the Supreme Court was placed at $4000, and those of the Associate Justices at $3500 each. The District Judges received from $1000 to $1800. The salaries have been raised from time to time; since March, 1873, they have been as follows: the Chief Justice, $10,500; the Associates, $10,000; the Circuit Judges, $6000, and the District Judges from $3500 to $5000.

By act of April 10th, 1869, it was provided that any Judge of any Court of the United States, having held his commission ten years, and having attained the age of seventy years, might resign his office and receive the same salary during life which was payable to him at the time of his resignation.[1]

The officers of the United States Courts are Attorneys, Marshals, Reporters, and Clerks. The Attorney-General is charged with the duty of conducting suits in the Supreme Court in which the United States shall be concerned. He is also to give his advice and opinion upon questions of law when required by the President, or requested by the heads of any of the departments touching any matters that may concern their departments. He has a seat in the Cabinet, and is at the head of the Department of Justice established in 1870.

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[1] Judges Robert C. Grier and Samuel Nelson of the Supreme Court have resigned under this provision.

The Supreme Court has a Reporter, whose duty it is to report all the cases brought before that Court. These reports are published, and now fill many volumes.[1] In each judicial district there is a District Attorney, who attends to all cases in the District and Circuit Courts in which the United States is a party. Each district has also a Marshal, who is the executive officer of the Court, performing the same general duties in the United States Courts as the Sheriff in the State Courts. He carries out the order or judgment of the Court, and executes its process. The Clerk keeps a record of all the proceedings, giving a history of each case, with all the orders, decrees, judgments, etc., of the Court. He keeps the seal of the Court, and has charge of any moneys paid. The Attorney, Marshal, and Clerk of the District Court are also officers of the Circuit Court. The Attorney and Marshal are appointed by the President and Senate, but each Court appoints its own Clerk.

Sec. 2, Clause 1.—*The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all*

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[1] The Reporters have been as follows:

Alexander J. Dallas,	1789 to 1800.	Benj. C. Howard,	1843 to 1860.
William Cranch,	1801 to 1815.	Jeremiah S. Black,	1861 to 1862.
Henry Wheaton,	1816 to 1827.	John W. Wallace,	1863 to 1875.
Richard Peters, Jr.,	1828 to 1842.	Wm. T. Otto,	1875 to ——.

A reference to 5 Wheaton, 317, means the 5th Vol., 317th page of Wheaton's Reports.

cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

The judicial power extends to all *cases*, etc. The Court has no power to act except when cases are brought before it. "All cases in law and equity are all suits, civil and criminal, involving controverted rights between party and party, and instituted in legal form of judicial proceedings."[1] Until a *case* has been regularly brought before the Court the Judges have no power in regard to it. It is not their province to give information to Congress that a proposed law is unconstitutional, nor does it belong to them to advise the President that a law already enacted is in conflict with the Constitution. Their power is *judicial* merely. When a suit is commenced, and the case is before them, it is their duty to interpret the law involved, and to give the meaning of any part of the Constitution which may have a bearing upon the matter at issue. But the Court can not go beyond the case which is before them and give their views as to points not involved. The Judges do not make the law; they interpret and apply it; and this only as cases are regularly brought before the Court.

The judicial power extends to cases in *equity*. "There is hardly a subject of litigation between individuals which may not involve those ingredients of fraud, accident, trust, or hardship, which would render the matter an object of equitable rather than of legal jurisdiction, as the distinction is known and established in several of the States. It is the peculiar province, for instance, of a Court of Equity to relieve against what are called hard bargains. These are contracts in which, though there may have been no direct fraud or deceit, sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties, which a Court of Equity would not tolerate. In such cases, where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction."[1] In some of the States there are separate Courts for cases of equity, called Courts of Equity or Courts of Chancery. In other States, the same Court has jurisdiction both in law and equity; this is the case, as we have seen, in the United States Courts.

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[1] Farrar, p. 458.

The power extends to cases arising under the *Constitution, the laws of the United States*, and *treaties* made under their authority. The Constitution confers certain powers, grants certain privileges, and secures to the citizen certain rights. If a citizen should be injured in regard to any of these, he could seek redress in a United States Court. If a law of the United States is violated, the offender must be tried before a National, not before a State Court. Robbery of the mail, evasion of the revenue laws, counterfeiting the coin of the country, would be instances of this. Any disregard of the stipulations of a treaty, whether by an individual, a corporation, or a State, would lead to a case arising under the treaties made by the authority of the United States, which must be tried before a National Court.

The propriety of referring to the Courts of the United States the various cases enumerated in this clause can not be questioned. "The judicial power," says Chief Justice Jay, "extends to all cases affecting ambassadors, other public ministers, and consuls; because, as these officers are of foreign nations, whom this nation is bound to protect, and treat according to the laws of nations, cases affecting them ought to be cognizable only by national authority:

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[1] Federalist, No. 80.

To all cases of admiralty and maritime jurisdiction; because, as the seas are the joint property of nations, whose rights and privileges relative thereto are regulated by the laws of nations and treaties, such cases necessarily belong to national jurisdiction:

To controversies to which the United States shall be a party; because, in cases in which the whole people are interested, it would not be equal or wise to let any one State decide and measure out the justice due to others:

To controversies between two or more States; because domestic tranquillity requires that the contentions of States should be peacefully terminated by a common judicatory, and because, in a free country, justice ought not to depend on the will of either of the litigants:

To controversies between a State and citizens of another State; because, in case a State—that is, all the citizens of it—has demands against some citizens of another State, it is better that she should prosecute their demands in a National Court than in a Court of the State to which those citizens belong, the danger of irritation and criminations arising from apprehensions and suspicions of partiality being thereby obviated:

To controversies between citizens of the same State claiming lands under grants of different States; because, as the rights of the two States to grant the land are drawn into question, neither of the two States ought to decide the controversy:

To controversies between a State, or the citizens thereof, and foreign States, citizens, or subjects; because, as every nation is responsible for the conduct of its citizens toward other nations, all questions touching the justice due to foreign nations or people ought to be ascertained by and depend on national authority."[1]

The judicial power of the United States is thus made to extend to all cases involving *national* questions. The Supreme Court is to construe the laws and Constitution of the United States. The crowning defect of the old Confederation was that there was no *national* judiciary. The United States had treaties with other nations, whose import, like that of other laws, must be ascertained by judicial determinations. "To produce uniformity in these determinations, they ought to be submitted in the last resort to one *Supreme tribunal.* And this tribunal ought to be instituted under the same authority which forms the treaties themselves. If there is in each State a court of final jurisdiction, there may be as many different final determinations on the same point as there are courts. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations have found it necessary to establish one tribunal paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort a uniform rule of civil justice."[2] "Thirteen independent courts of final jurisdiction over the same causes arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed."[3]

The good results anticipated from the judicial system of the United States have been, to a large extent, realized. "The act of September, 1789, providing for the organization of the courts, has stood the test of experience since that time with very little alteration or improvement; and this fact is no small evidence of the wisdom of the plan, and of its adaptation to the interest and convenience of the country. The act was the work of much profound reflection and of great legal knowledge; and the system then formed and reduced to practice has been so successful and so beneficial in its operation that the administration of justice in the federal courts has been constantly rising in influence and reputation."[1] The Chairman of the Committee that reported the bill was Oliver Ellsworth, of Connecticut, who subsequently held the office of Chief Justice of the Supreme Court.

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[1] 2 Dallas, 419, 475. [2] Federalist, No. 22. [3] Ibid, No. 80.

The Constitution, as it originally stood, allowed suits to be brought against a State by citizens of another State, or by citizens or subjects of a foreign State. This caused dissatisfaction on the part of the States, as they were unwilling to be arraigned before the United States Courts on suits brought by private persons. For this reason an Amendment to the Constitution was proposed by Congress March 5th, 1794:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

This was ratified by the legislatures of three-fourths of the States, and became a part of the Constitution, as announced by the President, January 8th, 1798. It is the Eleventh Amendment. While it relieves so far the dignity of the States, it weakens the power of the national judiciary to do justice to the citizen, which is one of the ends for which the Constitution was formed.

The word *State*, in this clause (1) is interpreted by the Courts as not including the Territories or the District of Columbia. Hence, a citizen of one of the Territories or of the District of Columbia can not bring a suit in a United States Court. The National Courts, which are open to the citizens of every State, and even to aliens.

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[1] Kent I, p. 305.

are closed against a portion of the citizens of the United States.

No direct suit can be brought against the United States either by a citizen or a State, without the authority of an act of Congress.[1] But claims against the government may be brought before the Court of Claims.

Nor are the officers of the general government liable to be sued for acts performed in the regular discharge of their official duties. "The suability of the officers for acts in the regular routine of their duties, and their liability to appear in courts, and plead such process, or answer for it in their own persons or property, would not only stop the wheels of government, but break the whole machine to pieces, and put an end to that political ideal being—the United States."[2]

Clause 2.—*In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.*

Jurisdiction is the power to hear and determine a cause. *Original* jurisdiction is the right to hear and determine a cause in the first instance. If a suit can be *commenced* in the Circuit Court, for instance, then that Court has original jurisdiction in the case. But if the case must be commenced in the lower court, then the Circuit Court has only *appellate* jurisdiction.

The Constitution vests the judicial power in one Supreme Court and in such inferior Courts as Congress may establish. One Supreme Court *must* be established, but Congress may exercise its discretion as to the number and character of the inferior Courts. So, also, the Constitution itself prescribes the cases in which the Supreme Court shall have original jurisdiction, that is, the cases which may be commenced in the Supreme Court. All other cases to which the judicial power of the United States extends must be commenced in inferior Courts, and come before the Supreme Court only by way of appeal or review.

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[1] 6 Wheaton, 411.

[2] (Wirt) Opin. of Att-Generals, I, p. 457.

"It has been decided by the Court that this original jurisdiction can neither be enlarged nor diminished; because, if enlarged it would detract from the Constitutional appellate jurisdiction; and, if diminished, it would so far deny all jurisdiction to the Supreme Court, which can take appellate jurisdiction only in 'other cases.' It must also be exclusive; because, if a case of this kind can originate in any other Court, this Court, not being able to take appellate jurisdiction, could have no jurisdiction at all."[1]

The language of this clause, as to the appellate power of the Supreme Court, implies the establishment of the inferior Courts in which the suits can be commenced. As already stated, two inferior Courts have been established: the Circuit Court and the District Court. The act of Congress establishing them prescribes in what cases the District Court and in what the Circuit shall have original jurisdiction. Of some cases, the District Courts were to have exclusive original jurisdiction; and of others, this jurisdiction was to be concurrent with the Circuit Courts and the State Courts. So, also, the cases are prescribed which may be carried from the District Court up to the Circuit, and those which may be carried from the Circuit up to the Supreme Court.

Unless Congress had made these "exceptions and regulations" the Supreme Court would have, by the Constitution, appellate jurisdiction in all the cases coming under the cognizance of the National Courts, except those in which the Constitution had given them original jurisdiction. Congress has "excepted" some cases out of the appellate jurisdiction of the Supreme Court, giving the final disposition of them to the inferior Courts.

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[1] Farrar, p. 468.

The Act of Congress now referred to provides for the exercise of appellate power by the Supreme Court in certain cases which have been decided by the highest State Courts. Of course, these cases involve the Constitution, laws, or treaties of the United States; otherwise, the decision of the State Supreme Court would be final.

Two views are held as to the appellate jurisdiction of the Courts. The language of the Constitution is, "In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such regulations and exceptions as Congress shall make." Some maintain that the expression, "with such exceptions and regulations as Congress shall make," gives Congress the control of the whole matter. They hold that the Courts can exercise appellate jurisdiction in those cases only which Congress has provided for. If Congress had not provided any rule to regulate the proceedings on appeal, the Court could not exercise any appellate jurisdiction. This theory is, that all the judicial power of the nation, except in cases affecting ambassadors, etc., or those in which a State is a party, is placed at the disposal of Congress, who may give it out at their discretion.

Others hold that the Constitution itself vests the judicial power of the nation in the Supreme Court, and such inferior Courts as Congress may establish. The language of the Constitution is the same for the three departments of the government. As it says the Legislative power "shall be vested" in Congress, and the Executive power in the President, so the Judicial power "shall be vested" in the Courts. By the Constitution Congress may make the necessary laws, the President may execute them, and the Courts may interpret and apply them. As Congress is not dependent upon the President for authority to legislate, neither are the Courts dependent on Congress for authority to exercise their judicial functions. According to this view the whole judicial power belongs to the Courts. "Congress may remove or 'except' some cases out of the appellate jurisdiction of the Supreme Court by giving it to some other Court of the United States, but not by abolishing it, or leaving it to be exercised or not by any body else. They may also make 'regulations;' that is, prescribe rules by which the jurisdiction shall be exercised so as to render it efficient and effectual for its purposes, but in no case to limit or obstruct it.

"The only power conferred on Congress by this clause is to make exceptions to, and regulations for, the appellate jurisdiction of the Supreme Court. If they do neither, that Court has the whole appellate power by the Constitution. If they make 'exceptions,' they must give cases excepted to some inferior Court. If they make 'regulations,' the jurisdiction must be exercised according to the rules so prescribed; otherwise, the jurisdiction must be exercised in conformity to such rules as the Court itself may prescribe, according to law."[1] Though the former of these views has been the one adopted in the main, both by the Legislative and Judicial departments of the government, the latter seems to be more in accordance with the spirit and letter of the Constitution.

The Courts of the United States have a wider scope than those of Great Britain. If a law of Congress conflicts with the Constitution, the Supreme Court may declare it null and void. But the Courts of Great Britain can only interpret and apply the statutes of Parliament; they can not declare them null. There is no question of constitutionality or unconstitutionality touching an act of the British Parliament. Parliament itself is supreme for law-making purposes; it possesses all the legislative power of the British people. But while Congress can repeal or amend their own statutes, they can not alter or amend the Constitution. The Constitution is the work of the people, and they alone can amend it. The legislative power of Parliament, therefore, is broader than that of the Congress of the United States, and, as a consequence, the province of the British Courts is narrower than that of ours.[1]

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[1] Farrar, p. 471.

It has been already said that the powers of the Courts are *judicial*, not *political*. Thus if there were two contending parties, each claiming to be the rightful government, of France, for instance, the question would not be left to the Judiciary. So if there should be a contest between two parties in a State, each claiming to be the legitimate government, the question would be a political, and not a judicial, one. Congress has decided that the votes of certain States should not be counted in an election for President; Congress has also decided that, where the legislature of a State had voted to ratify an amendment to the Constitution, and subsequently withdrawn its ratification, the vote of ratification must be counted. The Supreme Court has itself decided that certain questions were political, and therefore did not come within its jurisdiction. The judiciary can not prescribe a policy for the government of the country. That must be left to the other departments. The judicial department can not restrain the others in their action, though the acts of both, when performed, are, in proper cases, subject to its cognizance.[2]

There is danger in times of high political excitement that one department may encroach upon another; but no government, save an absolute despotism, could be framed in which this liability would not exist. We have a right to assume that each department of the government will honestly and in good faith confine itself to the duties which by the Constitution have been assigned to it.

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[1] Yeaman's Study of Government, Chap. vii.

[2] 4 Wallace, 500.

Apprehension is sometimes expressed lest the Supreme Court, by deciding acts of Congress to be unconstitutional, may obstruct the work of legislation, and block the wheels of government. But it must be remembered that each of the three great departments of the government is clothed with great power, and each may do incalculable mischief, if so disposed; yet the history of the nation does not show that this power has been so used to any considerable extent. In general, the National Courts have been extremely cautious in regard to interference with the laws of Congress.

"It is an axiom in our jurisprudence," says Judge Swayne (United States vs. Rhodes and others), "that an act of Congress is not to be pronounced unconstitutional unless the defect of power to pass it is so clear as to admit of no doubt. Every doubt is to be resolved in favor of the validity of the law. Since the organization of the Supreme Court but three acts of Congress have been pronounced void for unconstitutionality."

The first instance was in 1801, at the beginning of Mr. Jefferson's administration. Near the close of the administration of Mr. Adams, a person was appointed to office and his commission made out, but not delivered. Mr. Jefferson withheld the commission. Application was made to the Supreme Court for a writ of *mandamus*, to compel Mr. Madison, the Secretary of State, to deliver it; the judiciary act of 1789 authorizing the Supreme Court to issue such writs. But the Court, while they held that to withhold the commission was an act not warranted by law, and violative of a vested legal right, decided that clause of the act of 1789 to be unconstitutional, as it gave the Court original jurisdiction where the Constitution had not given it.[1]

The second instance was in the celebrated Dred Scott case, in Mr. Buchanan's administration, in 1857. The Court decided that the eighth section of the act of Congress of 1820, preparatory to the admission of Missouri into the Union, commonly called the "Missouri Compromise," was unconstitutional. This section prohibited slavery in that part of the Louisiana territory lying north of thirty-six degrees thirty minutes north latitude, and not included in the State of Missouri.[2] (It was claimed by the minority of the Court at the time, and by other Judges of the same Court since, that this question was not before the Court, and, therefore, that what was said in regard to it was no more binding than the views of the minority.)

The third case was that of Garland, of Arkansas, which was tried in the winter of 1866–7. Congress had enacted, (Act of July, 1862, amended by that of January, 1865,) that all officers of the United States, including attorneys practicing in United States Courts, should take a test oath. The Supreme Court decided that this act was unconstitutional as to attorneys of the Supreme Court, who were such before the rebellion, as being a bill of attainder and an *ex post facto* law.[3]

The last two decisions were made in times of high political excitement, and were severely commented upon by lawyers; the dissenting judges also gave their reasons for believing the laws in question to be strictly constitutional. Some other cases have occurred more recently, but they are comparatively unimportant.

The fact that, in a period of more than fourscore years, Congress enacted but three laws, which, in the judgment of the Supreme Court, contained any thing conflicting with the Constitution, is a proof of the care and caution of Congress on the one hand, and, on the other, of the disposition of the Judiciary to avoid all encroachment upon the Legislative department of the government.

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[1] 1 Cranch, 137, Marbury *vs.* Madison. [2] 19 Howard, 393, Scott *vs.* Sandford. [3] 4 Wallace, 334, *Ex parte* Garland.

Clause 3.—*The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.*

A trial by jury is a trial by twelve men, impartially selected, who must all concur in the guilt of the person accused before he can be convicted. This right of trial by jury has long been regarded as one of the bulwarks of liberty. In the celebrated Magna Charta, granted by King John, at Runnymede, June 15th, 1215, is the following article: "No freeman shall be taken, or imprisoned, or disseized, or outlawed, or banished, or any ways injured; nor will we pass upon him, nor send upon him, unless by the legal judgment of his peers, or by the law of the land." "Nor will we pass upon him, nor send upon him" (nec super eum ibimus, nec super eum mittemus), is interpreted to mean that no man should be condemned (without trial by his peers) either in the Court of the King's Bench, where the king is supposed to be always present, and to render judgment in his own person, or before any judge whom the king may delegate to try him.[1]

The word *peers* means equals, and has reference to the different classes or orders of men in a country like England. Another article of Magna Charta says: "Earls and barons shall not be amerced but by their peers." A man must be tried by a jury composed of those who are of the same rank or standing with him. In the United States, as we have no orders of nobility, the trial is by a jury of impartial men.

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[1] Bowen's Constitution of England and America, p. 11.

Most of the cases that come before the Supreme Court, and many of those before the lower Courts, are decided by the Court; there is no jury. But the Judiciary act of 1789 provides that issues of fact, in the District Courts, in all causes, except civil causes of admiralty and maritime jurisdiction, shall be by jury. So in the Circuit Courts, with the exception of equity suits, besides those above named, the trial of issues of fact shall be by jury. But the Constitution requires that *all criminal* cases, before any United States Court, shall be by jury. Cases of impeachment are tried by the Senate, as we have seen.

The trial must take place in the State where the crimes were committed. This is a provision in favor of the accused. He is made to suffer as little inconvenience as possible. Offenses "not committed in any State" are those in the District of Columbia; in the organized territories; in the Indian country; in the forts and arsenals of the United States; and upon the high seas. Provision is made by law for all these; those committed upon the high seas are tried in the State where the vessel first arrives.[1]

With us there is no conviction unless the jury are unanimous. "The unanimity required in the verdicts of English and American juries was not originally required among the people with whom the institution had its origin; the verdict being reckoned by a majority, except among the Normans after they went to that province of France which has since borne their name. * * In Sweden the jury exists to-day as it has existed for many centuries. A verdict is given by one-half the jury, or any greater proportion, and the judge; or by a unanimous jury against the opinion of the judge; there being no verdict when the majority are opposed by a minority and the judge. * * We could now well consider whether absolute unanimity may not safely be dispensed with; whether the jury is not less a necessity in a perfectly free community of equals than in one composed of the three orders; whether its functions, in the progress of our political growth, have not been in great part, or entirely performed, so that in the future it is to be simply a preservative and safeguard instead of a forming and guiding influence—a conservative rather than a progressive force; and therefore whether we may not well limit its application to penal, criminal, and political causes and actions arising in tort or sounding in damages; leaving all matters of account, contract, title, and estates, entirely to the Court, without the intervention of a jury. Such, at least, seems to be the tendency of the professional judgment of the country."[1]

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[1] Paschal's Annotated Constitution, p. 211.

We may consider here some Amendments which relate to the subject of the Judiciary.

Amendment 5.—*No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.*

There are two juries, the grand jury and the petit jury; the latter being meant when the word *jury* is used without any qualifying term. The grand jury is composed of a number of men, not less than twelve nor more than twenty-three, selected as prescribed by law. In the National Courts after the grand jury has been impaneled, the Judge delivers his charge to them, directing them to make careful inquiry of all offenses committed within the district against the laws of the nation, and to make presentment of the same.

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[1] Yeaman, Chap. xiii.

A *presentment* is an accusation made by the grand jury from their own observation or knowledge, or from evidence before them. An *indictment* is a formal accusation drawn up by the proper officer—in the United States Courts, the district attorney—charging offenses upon certain parties. It is the duty of the grand jury to examine the grounds of this accusation. If the evidence seem to them insufficient to warrant a trial of the party accused, they endorse upon the bill of indictment, "not a true bill," or "not found," and the prisoner is released. But if they regard the accusation as well founded, they endorse upon the indictment the words "a true bill." In this case they are said to *find* the indictment, and the person accused must be brought to trial. A presentment may lead to an indictment, or it may not. Sometimes it is a mode taken by the grand jury to call public attention to certain acts which are thought worthy of reprehension. Though the Constitution says no person can be tried unless on a presentment *or* indictment, no person is, in fact, brought to trial except on indictment. Congress has never authorized trials on presentment.

No person may be subject to a second trial for the same offense. That is, when by the verdict of a jury, a man has been regularly acquitted or convicted of the offense charged, and judgment has been pronounced, he can not be tried for that offense a second time. But if the jury could not agree, or were discharged before a verdict was rendered, or if judgment was arrested after a verdict, or a new trial granted in his favor, he might be tried again.

No person may be compelled to testify against himself, or be deprived of life, liberty, or property, without due process of law. In former times criminals have been compelled, and in some countries are now, to be witnesses against themselves, and even torture is used to wring from them a confession of guilt. Though the protection to the citizen specified in this Amendment was among the common-law privileges, it is inserted here for additional security.

Private property shall not be taken for public use without just compensation. It is necessary for the government sometimes to take possession of private property for public purposes. A road is to be made, or a street is to be opened, for example. In some cases the property is purchased beforehand; but if a price can not be agreed on, or the owner will not sell, the property is *condemned*, and a jury are summoned to assess the damages. They may not place as high an estimate on it as the owner does, but this is a liability to which all are subject alike.

Amendment 6.—*In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.*

All but the last two of these provisions were a part of the common law of England. But, until a period, comparatively recent, the accused was not, in that country, allowed in capital cases to have the assistance of counsel, or the right to compel the attendance of witnesses. We can hardly credit the statement, that before the accession of William and Mary, in 1688, a person arraigned for a capital crime was entitled neither to witnesses nor counsel. Yet such was the fact. (Judge Story). It was well, therefore, to guard these rights by a provision in the Constitution; thus making sure that in all the land an accused person should be entitled not only to a trial by jury, but to witnesses and counsel as well.

Both these Amendments have reference to the civil administration of the government in time of peace. "Whenever from invasion or rebellion the public safety may require the administration of martial authority, criminals may be tried, convicted, and executed, without the intervention of a jury."[1] "The conspirators who assassinated the President of the United States while the country was in a state of war, and while the city of Washington was under martial law, were triable by military commission under the act of Congress, and not entitled to a trial by jury."[2] "The Constitution contemplates the possible existence of war with all its stern realities; and provides for an administration of authority under its provisions suited to such exigencies. In times of peace the citizen is to be secure in the enjoyment of his civil liberty and rights, according to the established forms and usages of law. But the Constitution contemplates the possibility of a state of public danger arising from the presence of a foreign or domestic foe. * * It contemplates the necessary suspension for the time being, and in particular localities, of the civil functions of the government, that the martial powers of the same may be efficiently exercised, for the security and welfare of the nation."[3]

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[1] Tiffany, p. 366. [2] Paschal, p 264. [3] Tiffany, p. 259.

Amendment 7.—*In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

The phrase "common law" is used in contradistinction from equity, admiralty, and maritime jurisprudence. It is the common law of England, the *lex non scripta*, the immemorial customs of the country. Article III., Section 2, Clause 2, gives to the Supreme Court appellate jurisdiction both as to *law and fact.* "The real object of that provision was to retain the power of reviewing the fact as well as the law, in cases of equity, and admiralty, and maritime jurisprudence." But as it was thought by some to authorize the Supreme Court to review the decision of a jury in mere matters of fact, and thus reduce to a form the right of trial by jury in civil cases, this Amendment was proposed to remove the misapprehension. The rules of common law recognized but two modes of re-examining facts tried by jury; first, the granting a new trial by the Court before which the issue was tried; and, second, by a writ of error. A *writ of error* removes nothing for re-examination but the *law.* An *appeal* would remove the cause entirely, subjecting the fact as well as the law to a review and a retrial. But an appeal is a process of civil law origin and not of common law.

Sec. 3, Clause 1.—*Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court.*

Treason is the highest crime known to society, because it tends to the destruction of the government itself. A traitor is always regarded as meriting the severest punishment that society can inflict. As treason is a breach of allegiance, it can be committed by one only against the government to which he owes allegiance. Most governments have made the word treason include many offenses which were not strictly treasonable, and thus often persons have been put to death for crimes for which some milder punishment would have been sufficient. As the word implies a breach of faith, it was *petit* treason for a wife to kill her husband, or for a servant to kill his master. The act was more than murder; it was a kind of treason. For a subject to attempt to take the life of the king or queen, or to levy war against the king, or to adhere to his enemies, was *high* treason.

When a tyrannical king was on the throne, his judges would often declare offenses to be treason which the people never suspected to be treasonable. This was called *constructive* treason. To prevent this, a statute was enacted in England in the time of Edward III., which defined the term. This statute comprehended the various kinds of treason under seven heads. The third of these was, levying war against the king in his realms; and the fourth was, adhering to the king's enemies in his realm, and giving them aid and comfort in his realm or elsewhere.

Our Constitution takes a part of this statute of Edward III. for its definition of treason. It is made to consist only in levying war against the nation, or in adhering to its enemies, giving them aid and comfort. The purpose was to make the meaning as definite as possible, that all opportunity for constructive treason might be removed. Mr. Madison thought the definition was too restricted, and that more latitude ought to be left to the discretion of Congress. But the Convention preferred to place the definition in the Constitution itself, and not to leave it to the judgment of Congress.

It has been decided by the Court that there must be an actual levying of war; that a conspiracy to subvert the government by force is not treason. But after war has been commenced, men may give aid and comfort to the enemy, although they may not actually bear arms. The language of the Court is: If war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered traitors.[1]

While the Constitution thus makes the offense of treason to embrace the giving aid and comfort to the enemies of the country, opinions may differ in regard to what constitutes "aid and comfort." During the late civil war, two steamers belonging to a steamship company had been seized for the rebel service. Subsequently, payment was offered for them to the agent of the company, when he was informed by the government that acceptance of payment from the rebels would be treated as an act of treason against the United States. Said Mr. Seward, Secretary of State: "It is treason for any person to give aid and comfort to public enemies. To sell vessels to them which it is their purpose to use as ships of war, is to give them aid and comfort. To receive money from them in payment for vessels which they have seized for those purposes, would be to attempt to convert the unlawful seizure into a sale, and would subject the party so offending to the pains and penalties of treason, and the government would not hesitate to bring the offender to punishment."[2]

In times of rebellion, or civil war, all persons should exercise great caution in regard to their conduct and language, lest they subject themselves to the charge of giving aid and comfort to the enemies of their country. Actions and words, which, in other circumstances, would pass unnoticed, may be productive of great mischief when the life of the nation is endangered. All good citizens will, therefore, at such times, studiously refrain from whatever might bear an unfavorable construction.

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[1] *Ex parte* Bollman, 4 Cranch, 126. [2] Tiffany, p. 283.

Conviction of treason requires the testimony of two witnesses to the same overt act of treason, or a confession in open Court. A private confession passes for nothing.

Aaron Burr, who had been Vice-President of the United States, was tried for treason in 1807, and acquitted.

Clause 2.—*The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.*

Had this clause been omitted from the Constitution, Congress would still have had the power to declare what punishment should be inflicted on a traitor. It was inserted, doubtless, to prevent the barbarities usually connected with the punishment of treason, and to limit the effects of attainder. According to the English theory the judgment itself pronounced upon one who had been convicted of treason involved certain consequences in the mode of his execution, as well as in regard to his estate. The offender was put to death in a cruel manner. His bowels were to be taken out while he was yet alive, and burned in his presence. His head was cut off, and his body divided into quarters.

The judgment also involved *attainder*, which *worked* corruption of blood, or forfeiture. There was no judgment of attainder, but the attainder followed the judgment, as a matter of course. And this attainder included corruption of blood, or forfeiture, as a natural consequence. All his property, of every description, was forfeited. And not only so, his children could not inherit through him from his ancestors. All inheritable qualities were destroyed by corruption of blood. In a country where real estate was entailed, the children were thus made to suffer for the offense of the parent. If the property of the traitor himself were confiscated to the government, there would be no hardship to the children; for the heirs have no right to the estate while the ancestor lives. But if the blood is corrupted so as to cut off the connection between his children and his ancestors, and prevent any inheritance descending to the former from the latter after his death, the children would suffer.

Our Constitution mitigates the severity of this punishment. It provides that the offender himself shall bear all the punishment. There shall be no corruption of blood except during the life of the party attainted. As Mr. Madison says, "The Convention have restrained Congress from extending the consequences of guilt beyond the person of its author."[1] If there should be any attainder in the punishment of treason, it must not be allowed to work corruption of blood after the death of the traitor. The corruption of blood must then cease, and there can be no new forfeiture. It does not mean, as some have supposed, that if the property of the traitor has been confiscated, it must be restored to his heirs at his death. This would involve the absurdity of forbidding the taking away, except for the short period between sentence and execution, the property of one who had been guilty of the highest offense known to society, while minor offenses are often punished with heavy fines.

The *attainder* spoken of in this clause must be that connected with the judgment pronounced by a Court, and not a legislative attainder. For we have already seen that Congress is forbidden, as also the States, from passing any bill of attainder. Congress might provide for a judicial attainder in the case of treason, but the effects of this attainder must be limited to the life of the offender.

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[1] Federalist, No. 43.

By act of April, 1790, Congress provided that treason should be punished with death by hanging. In 1862 (July 17th), an act of Congress declared that the traitor should suffer death, and his slaves should be made free; or, at the discretion of the Court, he should be imprisoned for not less than five years, and fined not less than ten thousand dollars, and all his slaves be made free; the fine to be levied on any of his property, real or personal, excluding slaves. This act was accompanied by a joint resolution, providing that no punishment under the act should be so construed as to work a forfeiture of real estate of the offender beyond his natural life. This resolution was passed because the President regarded the clause of the Constitution now under consideration as forbidding the forfeiture of real property except during the life of the offender.

The act of 1790, referred to above, provides for punishing a variety of offenses besides treason. Some of these were to be punished with death, but most of them with fine and imprisonment; the fines ranging from one hundred to five thousand dollars. Section 24 of the act provides that "no conviction or judgment for any of the offenses aforesaid shall work corruption of blood or any forfeiture of estate." The language is, that no conviction or judgment shall work *any forfeiture of estate.* To interpret it as the President in 1862 interpreted the clause of the Constitution relating to the punishment of treason, would be to make it contradict the other sections of the same act, which prescribe punishments by fines, *i. e.*, by the forfeiture of estate.

The meaning is obviously this: The offenses mentioned are to be punished, some with death, some with fines and imprisonment; but no conviction or judgment, *as such, or by its own force*, is to work corruption of blood, or any forfeiture. The offender must give up so much of his estate as is needed to pay the fine imposed; but, that being done, there is to be no loss of additional property, in the way of forfeiture, as a consequence of conviction or judgment. Had Congress made the punishment of treason to be death and the absolute forfeiture of all the estate of the traitor, they would not have gone beyond the authority conferred on them by the Constitution. They preferred not to go to the limit assigned them. They enacted that attainder of treason should not work *any* corruption of blood or forfeiture. But at the same time they made an absolute confiscation of property for offenses much less heinous than treason.[1]

As treason is a crime against sovereignty, a violation of one's allegiance, there can be no treason against a particular State.[2] If a State, by its Courts, punishes treason, it must be not as treason against itself, but as treason against the Union; and in this view the propriety of that State legislation which affixes to it particular penalties is doubtful.[3]

ARTICLE IV.

Section 1.—*Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.*

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[1] For views similar to those here advocated, see Story, Duer, Farrar, Tiffany, Mansfield, and others. For the opposite view, see Yeaman, appendix.

[2] Elliot's Debates, V, 449. [3] Jameson, p. 56.

"Full faith and credit" means that credit which the State itself gives to the acts, etc., when proven.

"The public acts" are the legislative acts, the enacted laws of a State.

"Records" are the registration of deeds, of wills, legislative journals, etc.

"Judicial proceedings" are the proceedings, judgments, orders, etc., of courts.

Whenever the laws and acts of one nation come into examination in any forensic controversy in another nation, they must be proved like other facts. The Constitution provides that this shall not be necessary as between the different States of the Union; that the judgments, etc., of one State need not be re-examined in another. But the manner in which the acts and judgments shall be authenticated, and what their effect shall be, is to be left for Congress to declare.

In 1790, Congress enacted that the acts of the legislature of a State shall be authenticated by its seal. And that the records of a Court should be proved by the attestation of the clerk and the seal of the Court annexed (if there be one), with the certificate of the judge. It was provided, also, that the records thus authenticated should have such faith and credit in the Courts of other States as they have in the Courts of the State from which they are taken.

Sec. 2, Clause 1.—*The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.*

Though the word *citizen* is repeatedly used in the Constitution, it is nowhere defined in the original instrument. But the Fourteenth Amendment says, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside." Prior to the abolition of slavery, only *free* inhabitants born in the United States, or naturalized under the laws of Congress, would have been considered citizens. Every citizen of the United States is a citizen of the State where he resides, and every citizen of a State is a citizen of the United States. One may be a citizen of the United States and not a citizen of any particular State, because his residence may be, not in a State, but in a Territory, or in the District of Columbia. But whenever he becomes a resident of a State he becomes a citizen of it also.

This clause of the Constitution provides that a citizen of one State on removing to another shall enjoy all the rights and privileges of the citizens of that State. But he can not claim any which were peculiar to the State he has left. He can not carry the local laws of one State with him when he removes to another.

This clause also provides that the person and property of a citizen of one State shall be secure in every other State. No other part of the Constitution has been so frequently or flagrantly violated as this. Indeed, until 1866, no law had been enacted by Congress for carrying its provisions into effect. Early in that year a bill was passed, entitled "An Act to protect all persons in the United States in their civil rights, and furnish the means of their vindication." It was vetoed by President Johnson, but receiving the requisite two-thirds vote of each House became a law, April 6th, 1866. It is known as the Civil Rights Bill. It declares, that all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are citizens of the United States; and all such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, shall have the same right, in every State or Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence; to inherit, purchase, lease, sell, hold, and convey real and personal property; and to full and equal benefit of all laws and proceedings for the security of person and property.

This act of Congress is, obviously enough, in conflict with the language of Judge Taney in the Dred Scott case, that "a free negro of the African race whose ancestors were brought to this country and sold as slaves, is not a citizen in the meaning of the Constitution." But, as has been already stated, it has been maintained by other members of the Supreme Court that this point was not before the Court; and therefore the language above quoted is not to be regarded as the decision of that body.

The study of our governmental history shows that the emancipation of a slave was exactly equivalent to the naturalization of an alien or foreigner. As naturalization removed the disqualification of the alien, emancipation removed that of the slave. This was the decision of the Supreme Court of North Carolina, in 1836, as delivered by Judge Gaston, and it was re-affirmed by the same Court in 1848.

That the language of Judge Taney in the same trial, to the effect that "free negroes were not regarded in any State as citizens at the time of the Declaration of Independence, and the formation of the Constitution," is not in accordance with the teachings of history, two facts will suffice to show. At the time of the ratification of the Articles of Confederation, all free, native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications, possessed the franchise of electors on equal terms with other citizens.[1] The other fact is this. On the twenty-fifth of June, 1778, when the Articles of Confederation were under discussion in Congress, a motion was made that the word "white" should be inserted between the words "free" and "inhabitants" in the fourth article. Two States voted for the amendment, eight voted against it, and the vote of one State was divided.[1] This fourth article corresponds to the clause of the Constitution which we are now considering, It reads: "The free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States."

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[1] **Judge Curtis, in Scott *vs.* Sandford.**

The first section of the Fourteenth Amendment to the Constitution which was proposed by Congress, June 16th, 1866, and having been ratified by three-fourths of the States, was declared to be a part of the Constitution, July 28th, 1868, is as follows: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

Clause 2.—*A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.*

A State has no authority beyond its own limits. If a criminal should escape from one State to another, th former could not arrest him because he is beyond her boundaries, and the latter could not punish him for offenses committed beyond her jurisdiction. It was necessary that a power whose authority extended over the whole country should make provision for the arrest and punishment of fugitives from justice.

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[1] Jour. Cont. Cong., IV, 272.

Before any law had been enacted by Congress to carry into effect this clause of the Constitution, the Governor of Pennsylvania made a requisition upon the Governor of Virginia to deliver up an escaping criminal. The requisition was refused by the latter on the ground that the clause gave him no authority to deliver up the fugitive. The case was referred by the Governor of Pennsylvania to the President, and by him laid before Congress. In consequence, the act of 1793 was enacted. This act provides that the demand be made on the executive authority of the State to which the fugitive has fled. Accompanying the demand should be a copy of the indictment found, or an affidavit made before a magistrate, and certified as authentic by the Governor making the demand. The arrest is then made by the order of the Governor of the State to which the criminal has fled, and the fugitive is delivered to the agent of the former. All the expenses must be paid by the State from which the escape was made. The act applies to the Territories as well as to the States.

A fugitive from justice may be arrested and detained prior to the demand by the Governor. The executive upon whom the demand is made can not go behind the demand and accompanying charge of the Governor demanding, to determine whether, by the laws of his own State, the offense charged is a crime.

The giving up by one *nation* of a fugitive from justice escaping from another nation, is called *extradition.* No nation can demand of another the surrender of a criminal except in consequence of express treaty stipulations.

Clause 3.—*No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.*

The act of February 12th, 1793, was passed to carry into effect this clause as well as the preceding one. A "person held to service or labor" might be a slave or an apprentice. This clause, and that part of the act of Congress relating to fugitives from labor, had special reference to slaves, though the word *slave* does not occur in the Constitution. The law of 1793 was amended in 1850, and made still more objectionable to the friends of freedom. The commissioners, before whom alleged fugitives were to be taken, might order any citizens tc assist in returning fugitive slaves; and any person hindering such return could be fined one thousand dollars and imprisoned six months, and might forfeit, in addition, one thousand dollars to the owner for each fugitive so lost. The commissioner was to have a fee of five dollars if the fugitive was not returned to the claimant, and ten dollars if he was returned. The harsh features of this law of 1850, with the repeal of the Missouri Compromise, and the Dred Scott decision, had much to do in directing public attention to the evils of slavery, and in preparing the people to put down the rebellion of 1861.

The law of 1850, and those sections of the law of 1793, which related to fugitive slaves, were repealed June 20th, 1864. On the first of February, 1865, Congress proposed an Amendment to the Constitution, abolishing slavery throughout the United States. On the eighteenth of December, of the same year, this was declared to have been ratified by the legislatures of three-fourths of the States. It is the Thirteenth Amendment. Thus was the question of slavery at last settled—a question which has caused more disturbance in our government than all other questions combined.

Sec. 3, Clause 1.—*New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.*

Clause 2.—*The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.*

The Articles of Confederation made no general provision for the admission of new States. Canada might come into the Union on acceding to the Articles of Confederation and joining in the measures of the United States; but no other colony could be admitted unless by the agreement of nine States. Vermont made application for admission in 1781; but the application was not granted, as Congress was unwilling to offend the States of New York and New Hampshire, both of which claimed it as within their jurisdiction, and opposed its admission into the Union.[1]

From the adoption of the Constitution to the present time twenty-five new States have been admitted: the first, Vermont, in 1791; the last, Colorado, in 1876. No State has been formed by the junction of two or more States, or parts .of States, while four have been created within the jurisdiction of other States: Vermont from New York (claimed also by New Hampshire),

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[1] Pitkin's Hist., II, p. 314.

Kentucky from Virginia, Maine from Massachusetts, and West Virginia from Virginia.

The language of the Constitution is, new States *may* be admitted into the Union. It is not imperative upon Congress to admit them. Nor can Congress *compel* the people of a Territory to become a State. For obvious reasons, however, this has been regarded as desirable, and as such has been eagerly sought by the Territories.

After the Colonies threw off the yoke of Great Britain, the unsettled territory within the limits of the United States became a subject of grave concern. Some of the States claimed that those lands were within their chartered limits, and that to them belonged both soil and jurisdiction. Others insisted that, as the war had been carried on under a common government, and for the common interest, this territory should be considered as the common property of the nation.

On the sixth of September, 1780, Congress pressed upon the States having claims to the Western country, a surrender of a portion of their territorial claims, as they could not be preserved entire without endangering the stability of the general Confederacy. A month later (October 10th) Congress resolved, that the unappropriated lands that may be ceded or relinquished to the United States by any particular State, pursuant to the recommendation of Congress of September 6th, should be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States.

In accordance with this recommendation cessions were made by different States, as follows: New York, March 1st, 1781; Virginia, March 1st, 1784; Massachusetts, April 19th, 1785; Connecticut, September 14th, 1786; South Carolina, August 8th, 1787. These were made before the formation of the Constitution. North Carolina and Georgia had not relinquished their claims when that instrument was adopted, but they did so afterward: North Carolina, February 25th, 1790, and Georgia, April 24th, 1802. The language of Clause 2, that the claims of any particular State should not be prejudiced, had reference to the claims of the last two States named above.

The Constitution confers on Congress full power to make laws respecting the territory belonging to the nation and not yet formed into States. Without a specific grant to that effect in the Constitution, Congress would doubtless have had this power. The first law, indeed, organizing a Territory, was enacted before the Constitution was adopted—the Ordinance for the Government of the Territory of the United States North-west of the River Ohio, July 13th, 1787.

The framers of the Constitution introduced these two clauses of Section 3, into the Constitution, that the resolution of Congress, of the tenth of October, 1780, might be carried into effect; and they had primary reference to the territory then claimed by different States. But the language is broad enough to cover whatever territory the United States might subsequently acquire. The Constitution nowhere in express terms authorizes the general government to enlarge the national domain by purchase, by conquest, by annexation, or in any other mode; but this is one of the powers incident to national sovereignty, and as such it has been repeatedly exercised by the United States. Louisiana was purchased under the administration of Mr. Jefferson; Florida, under that of Mr. Monroe; Texas was annexed under the presidency of Mr. Tyler; and the territory which was obtained from Mexico was conquered under Mr. Polk. All these gentlemen were strenuous advocates in theory of the doctrine that our general government is one of limited and enumerated powers.

There is no doubt that the United States, like other nations, can acquire territory and govern it. Though the Articles of Confederation said nothing about the government of territory, Congress exercised this power, as we have seen, and passed the celebrated ordinance of 1787, while the Convention that framed the Constitution was in session. After the Constitution was adopted Congress did not deem it necessary to re-enact that ordinance, but merely *adapted* it to the new Constitution, by providing that the territorial officers who, before, were appointed by Congress, should now be appointed by the President and Senate, and should report to the President instead of to Congress. This act, which was passed August 7th, 1789, shows that the members of that first Congress under the Constitution regarded the ordinance as still binding.

This ordinance, for the government of the North-west Territory, was for a long period the model after which other Territories were organized. If the territory was at the South, that clause of the ordinance which prohibited slavery was excepted; if the territory was at the North, the government was to be in all respects similar to that provided by the ordinance of 1787.

Including the act of August 7th, 1789, eight separate acts were passed, extending over a period of over sixty years, each one prohibiting slavery in the Territory organized. The power of the general government to make *all* needful rules and regulations for the government of the Territories was not called in question till the winter of 1856–7, on the trial of the Dred Scott case. In giving the decision of the Court in that case, Judge Taney said, among other things which were not before the Court, that Congress had no power to prohibit slavery in a Territory of the United States. Even if that question had been before the Court, being a *political* question and not a *judicial* one, it was one over which that department of the government had no control.

In the same opinion the Court held that "the propriety of admitting a new State into the Union is committed to the sound discretion of Congress, and that the power to acquire territory must rest upon the same discretion." The power to govern a Territory was not inferred, however, from the clause of the Constitution now under consideration, but was regarded as the inevitable consequence of the right to acquire territory, which last right, as there is no allusion to it in the Constitution, must be a right of general sovereignty. Mr. Douglas held that the power of Congress to govern the Territories was to be found in the clause authorizing the admission of new States; if States may be admitted into the Union, Territories may be governed so as to fit them to become States.[1] It is admitted, then, by all that Congress has the exclusive right to govern the Territories; though the advocates of slavery would make that right, as they would all rights, subordinate to that institution. Since, however, slavery itself has been abolished by the Thirteenth Amendment, this only limitation is removed.[2]

As soon as new territory is acquired by the United States, the right of sovereignty vests in the nation. The authority of the nation over such territory is absolute, except as modified by the treaty with the nation from which it was obtained. The people of the Territory have no governmental power except as granted by Congress. Whenever Congress sees fit, it may organize a territorial government. Such a government usually consists of a legislature chosen by the people, a Governor appointed by the President and Senate, and Judges appointed in the same manner. But the territorial authority, whether legislative, executive, or judicial, derives its sanction from the sovereignty of the nation.

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[1] Report on Kansas.

[2] The Constitution of the Confederate States provided for the acquisition of new territory, and its government by Congress. But slavery was recognized and protected, and the inhabitants of other States and Territories might take their slaves into every Territory. That Constitution provided that other States might be admitted into the Confederacy by a vote of two-thirds of the whole House of Representatives, and two-thirds of the Senate — the Senate voting by States. (Macpherson's History of the Rebellion, 1860–65, p. 99.)

According to our governmental system, the people of a Territory, while they have civil rights and are entitled to protection, have no power to govern the Territory, that is, to govern themselves, save as it is given them by the general government; and they can not in any way participate in the general authority of the nation. But whenever a Territory is admitted into the Union by Congress, it becomes a State; and as such its people are authorized under the Constitution to manage their local affairs, and to participate in the administration of the nation. When a citizen of a State goes to reside in a Territory, he leaves behind him his political privileges, though not his civil rights. He has no longer any voice in the election of President, or of a member of Congress. He can not take part in electing a Governor of the Territory.

A Territory is a part of the domain of the United States; it is a part of the United States considered as the name of the country, but it is not *in the Union*, in the sense in which a State is. Nor can it come into the Union except as it is admitted by Congress. It may frame a State constitution, which its people may ratify; but that does not constitute it a State. The consent of Congress is indispensable to enable it to become an integral part of the Union. But when admitted, and thus constituted a State, it becomes a political corporation for local purposes, and a part of the great political organization whose sway extends over the whole domain. All our political privileges are thus dependent upon our being a part of the people of a State.

As a Territory is not compelled to become a State, so a State is not compelled to remain a State. If a State, as a political organization, refuses to consider itself any longer a member of the great national body, and by deliberate act withdraws from the Union, what then? The soil is still a part of the domain of the United States, and the people who dwell upon it are still subject to the nation. They have simply given up their privilege of managing their own local affairs, and all right to participate in the government of the nation. They have no more political authority than the people of a Territory before its admission into the Union, and they can have none till Congress confers it upon them.

There is no such political entity known to our governmental system as a State out of the Union. The moment the withdrawal takes place, the existence of the State as such ceases. It is no longer a State. If its people can maintain their independence by the sword, they may frame a government and call it what they please. But whether successful or unsuccessful, it is no longer one of the United States of America. It is no longer a State in the American Union. If it fails to gain its independence, it is not *in* the Union but *under* it.[1]

There has not been entire uniformity in the mode of admitting new States, but the following is the most usual, and may be considered the regular, mode. When a Territory has a sufficient population, a petition is sent to Congress, asking for leave to form a State constitution, and to be admitted into the Union. Congress then passes an act, called "an enabling act," authorizing the inhabitants to form a constitution. A Convention is held for this purpose, and the constitution thus formed is presented to Congress for their approval. If the proceedings have been regular, and the constitution is free from objection, Congress passes an act admitting the new State into the Union "on an equal footing with the original States, in all respects whatever." The case of Louisiana may be taken as an example. In March, 1804, the country purchased of France, under the name of Louisiana, was erected by Congress into two Territories — the District of Louisiana, and the Territory of Orleans. In February, 1811, an act was passed "to enable the people of the Territory of Orleans to form a constitution and State government, etc." April 8th, 1812, an act was passed, to take effect April 30th, "for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said State."

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[1] **Brownson, Chap. xii.**

This power to admit new States into the Union, and to make them equal participants with the older States in the government is "one of the new principles introduced into our system, and is, perhaps, the most anomalous, and most influential upon its future destiny. All the nations of antiquity held immense *provinces*, which constituted a part of the State, for purposes of revenue and armies, but were never admitted upon terms of *equality*, and whose inhabitants were never *citizens*. The idea of constituting a *government*, to be increased as to the *source of law*—by its own colonization, or by recruits from abroad, is wholly *new*."[1]

Section 4.—*The United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the Executive (when the legislature can not be convened) against domestic violence.*

This clause makes a republican government necessary in every State. It could not be obligatory upon the United States to guaranty it to the individual States, unless it was incumbent on them to have such a government. It is equivalent to saying that "no other shall be permitted to be established."[1] The clause prescribes a republican government for all the States, protection against hostile invasion, and, on request, against domestic violence. Every State must have a republican government, and if, at any time, a State is destitute of one, the general government is bound to provide it.[2]

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[1] Mansfield's Pol. Manual, p. 192.

This is the only instance in the Constitution where the government has a duty enjoined upon it, while the particular department is not mentioned. Here the obligation is from the United States to the States; but whether to be exercised by the President or by Congress is one of the questions that has grown out of the reconstruction measures.[3] In the case of Rhode Island, the Supreme Court held that, "It rests with Congress to decide what government is the established one in a State. For, as the United States guaranty to each State a republican government, Congress must necessarily decide what government is established before it can determine whether it is republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal."[4]

The Constitution does not define a *republican* government. The national government may be assumed to be republican in form, and thus a model for the States. Mr. Madison says: "We may define a republic to be a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior."[1] "The principle of republicanism is the equal right of the people, the citizens, all the members of the body politic. In theory it is the government of public opinion. * * The fundamental principles of right and justice for the government, the representative character of the governors, and their practical responsibleness to the governed, are the essentials of republicanism."[2]

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[1] Curtis, Hist. of the Const., II, p. 472.

[2] Farrar, p. 221.

[3] Paschal, p. 242.

[4] 7 Howard, 42.

The Constitution indirectly requires various provisions in the State governments by enjoining duties. The Senators of the United States are to be elected by the State legislatures. Members of the House of Representatives are to be elected by the same electors as vote for the members of the most numerous branch of the State legislature. The Executive of the States are often referred to. The Judges are to take an oath to obey the Constitution of the United States. Thus, the States must have the three great departments of government—the legislative, executive, and judicial. The legislature must be in two branches, and the most numerous branch must be elected by the people. The States are supposed to have written constitutions (Article VI).

It would have been the duty of the United States to protect each State against invasion and domestic violence had not this special provision been inserted, for one of the ends for which the Constitution was ordained was to provide for the common defense. In the Convention that framed the Constitution, "Mr. Rutledge thought it unnecessary to insert any guaranty. No doubt could be entertained but that Congress had the authority, if they had the means, to co-operate with any State in subduing a rebellion. It was and would be involved in the nature of the thing."[1]

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[1] Federalist, No. 39. [2] Farrar, p. 223.

"It may well be doubted if any dereliction of duty on the part of the officers of the State, whether legislative or executive, could afford an adequate excuse for the general government in suffering the regular administration of the authorized republican government of a State to be overthrown and destroyed, or otherwise substantially interfered with by domestic violence, under circumstances that obviously required their authoritative interposition for the preservation of the peace and good order of the community."[2]

The clause of the Constitution now under consideration has been brought prominently into notice in the recent secession and subsequent reconstruction of eleven States of the Union. In the six months commencing with December, 1860, ordinances of secession, so called, were passed by conventions in South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Arkansas, Virginia, Tennessee, and North Carolina. These conventions were entirely revolutionary and depended for their justification upon success. But success was not theirs. Their armies were defeated, after an immense expenditure of blood and treasure. The doctrine of the right of secession, or, which is the same thing, of absolute State sovereignty, which they had determined to submit to the arbitrament of the sword, had been proved to be utterly untenable, and their States had been placed in positions entirely abnormal.

"Here, then, were brought again into relations of practical subjection to the Union certain integral populations, which had once been Constitutional States, but which, having, by truancy from Constitutional courses, lost something necessary to that character, were such no longer—were, indeed, little more than 'geographical denominations;' communities, which, although as much in the Union, territorially, as ever, were properly neither Constitutional States nor Constitutional Territories, but States which had, *sua sponte*, for purposes of ambition, divested themselves of their Constitutional apparel, and donned that of treason and rebellion, and so had forfeited their prerogative as States to participate in governing the Union, and been relegated to a condition analogous to that of Territories —a condition in which they belonged to the Union, but had rightfully no governing function whatever, local or general."[1]

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[1] Elliot's Debates, V, p. 333. [2] Farrar, p. 229.

The work of reconstruction had commenced in some of the States before the close of the war. A large majority of the legislature of Virginia adhered to the rebellion, but Congress recognized as the lawful legislature a minority who assembled at Wheeling. This body sent Senators to Congress, and gave consent to the formation of the new State of West Virginia. In Missouri the governor and the majority of the legislature adhered to the rebellion, and passed an ordinance of secession. The State was admitted as a member of the "Confederate States," and continued to be represented in the Confederate Congress till the overthrow of the Confederacy. But a Convention, which had been called by the legislature of Missouri in 1860, having refused to pass an act of secession, was reconvened in July, 1861. This body took upon itself the government of the State, and was recognized as the lawful authority by the general government.

In December, 1863, President Lincoln issued a proclamation to the effect, that when one-tenth of the qualified voters of a State, having taken the required oath, should re-establish the State government, republican in form and in conformity with the oath, it should be recognized as the true government of the State, and should receive the benefits of the Constitutional guaranty embodied in this clause which we are now considering. In pursuance of this proclamation, Louisiana and Arkansas provided themselves with loyal State governments. But these States having been reconstructed through the military power, the mode adopted was not entirely satisfactory to Congress, and the States were not allowed representation in that body.

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[1] Jameson, p. 244.

The first State that was fully restored to her former relations to the Union was Tennessee. On the 24th of July, 1866, Congress passed a joint resolution, "That the State of Tennessee is hereby restored to her former, proper, practical relations to the Union, and is again entitled to be represented by Senators and Representatives in Congress." In the preamble to this resolution, it is recited, that the inhabitants of the State, having been by act of Congress declared to be in a state of insurrection, the State government can be restored to its former political relations in the Union only by the consent of the law-making power; that the people by a large vote, had adopted and ratified a constitution, abolishing slavery, and declaring void all ordinances and laws of secession, and debts contracted under the same; and had organized a State government under the new constitution, which had ratified the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

In March, 1867, an "Act to provide for the more efficient government of the rebel States" was passed, and, later in the same month, a supplementary act for the same purpose. This act divided these States into five military districts, each to be under the command of a military officer, who should be charged with the duty of protecting the inhabitants in person and property, of suppressing all disorder, and punishing crime. Criminals might be tried by the local civil tribunals, or, at the discretion of the commanding general, by military commissions. The inhabitants were to be registered, and an election held for delegates to a Convention in each State for the formation of a constitution. When such constitution should be approved by Congress, and the legislature elected under its provisions had ratified the Fourteenth Amendment, the State should become entitled to representation in Congress.

Under this act Arkansas was admitted to representation in Congress as one of the States of the Union, June 22d, 1868, having framed and adopted a constitution of State government, which Congress decided to be republican, and her legislature having ratified the Fourteenth Amendment. Three days later an act was passed providing for the conditional admission to representation of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida. These had framed and adopted constitutions of republican government, and were to be fully admitted as States of the Union when they should have ratified the Fourteenth Amendment. In all the above cases, including Arkansas, the admission was upon one or more fundamental conditions prescribed by Congress. All the six States made the required ratification, and were admitted without further legislation by Congress, except Georgia. Virginia was restored by act of Congress of January 26th, 1870; Mississippi by that of February 23d; Texas by that of March 30th; and Georgia by that of July 15th, of the same year.

The action of the general government has fully settled this, that if a State takes the attitude of hostility to the nation, and refuses to acknowledge the supremacy of the Constitution of the United States, it forfeits its right to all participation in the government of the Union, and can be restored to its former position only by the distinct and formal action of the law-making power of the United States. The doctrine, that the people of a State may take up arms against the nation, putting forth their whole energies and using all their resources to destroy the national life, and yet the moment they are subdued, claim the right to send Senators and Representatives to Congress, is, in the highest degree, preposterous. Yet this doctrine was gravely maintained in the Minority Report of the Joint Congressional Committee on Reconstruction, in June, 1866. And many worthy people seemed to be involved in inextricable confusion as to the relation of such States to the Union.

The argument assumes this logical form: A State is either in the Union or out of the Union. If in the Union, her people owe allegiance on the one hand, and are entitled to representation on the other. If out of the Union, they do not owe allegiance, nor are they entitled to representation. The inference drawn from this is, that if the people of a State are not allowed representation in Congress there rests upon them no obligation of obedience; and that whenever they acknowledge the obligation of obedience, representation is theirs as a matter of right.

The fallacy lies here. The terms *in the Union* and *out of the Union* are not necessarily contradictory. A given district of the United States may be in one sense in the Union, and in another sense out of the Union at the same time. That portion of our country called Ohio was a part of the national domain in 1800, and all the people living there were subject to the general government; in that sense the district and the people were *in the Union.* But the people had no participation in the general government, they had no Senators or Representatives in Congress, they cast no votes for President in the election of that year; in this sense they were *not in the Union.* Two or three years later Ohio was admitted into the Union, and then she was in the Union in both the senses stated. During the rebellion South Carolina was not in the Union as Ohio was; she was not out of the Union as Mexico was. She had forfeited her right to a share in the government, but she was under the authority of the United States.

Whatever forms of language may be used to describe the attitude of portions of the country in a state of insurrection, and their relation to the United States, we may be sure that they will not be admitted to a representation in the councils of the nation till, in the judgment of Congress, such admission will not conflict with the well-being of the country. No claim to be admitted, based on the ground that a State once a State is always a State, will have the slightest influence with those who shall, for the time being, be entrusted with the legislative power of the nation, no matter what may be their theoretic opinions as to the rights of States. The war was commenced in the interest of State sovereignty, and the sword has settled the question.[1] Let us hope that many years may elapse before the general government shall again be under the necessity of exercising the power with which it is clothed by this Section of the Constitution.

ARTICLE V.

AMENDMENTS.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing Amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when

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[1] "It can not be too often repeated that the war was not primarily between freedom and slavery. It was the war of the nation and the Confederacy." Mulford, p. 340.

ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Definite provision is here made for amending the Constitution. The Articles of Confederation could not be altered except with the assent of *all* the States. The present Constitution, however, can be amended with the assent of three-fourths.

There are two modes of *proposing* Amendments, and two modes of *ratifying* them. Congress itself may propose an Amendment whenever two-thirds of both Houses deem it necessary; or, if two thirds of the State legislatures request it, Congress must call a Convention for proposing Amendments. Amendments thus proposed become valid when ratified by the legislatures of three-fourths of the States, or by conventions in three-fourths thereof.

Nineteen Amendments have been proposed since the adoption of the Constitution; all of them by the first mode. Two-thirds of the legislatures have never yet applied to Congress to call a Convention for this purpose. Fifteen of the Amendments proposed have been ratified; and these ratifications have all been by the first mode—by the legislatures of the States, and not by conventions. The First Congress, which proposed twelve Amendments, adopted this method of ratification, and their example has been followed in every other case. It is fortunate for the country that a Convention has never been called for the purpose of proposing Amendments. The organic law of a people should be framed with great care and altered with the utmost caution. A body of men convened for the purpose of suggesting alterations in the Constitution would be likely to magnify their office in proposing many Amendments.

There are three limitations to this power of amending the Constitution: First, the clause could not be altered which prohibited Congress from passing, prior to the year 1808, a law prohibiting the importation of slaves. Second, the clause prescribing the mode of levying a capitation or other direct tax, could not be altered prior to the same year, 1808. Third, no State, without its consent, could be deprived of its equal suffrage in the Senate.

The first two limitations had reference to slaves, and became inoperative in 1808. The third was for the protection of the smaller States: to allow them the same representation in the Senate as the larger States. This provision was added at the very close of the Convention that framed the Constitution. Mr. Sherman, of Connecticut, moved that it be added to the article, but Mr. Madison opposed it, and it was lost. Mr. Gouverneur Morris, of Pennsylvania, subsequently renewed the motion, and it was carried on Saturday, September 15th. On Monday the Convention adjourned.

This is the only provision of the Constitution which is virtually irrepealable. In 1861 an Amendment was proposed by two-thirds of both Houses, as follows: "No Amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere within any State with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State." Had this Amendment been ratified, it would have been in terms an irrepealable clause. Whether it would have been so in fact it is not necessary now to inquire, as the ratification did not take place.

The British Constitution may be altered by Parliament without any confirmation or ratification by the people. Parliament is thus, says Mr. Fisher, a "Convention to amend the Constitution, duly appointed, always in existence, and always competent to entertain proposals for needed alterations, with full authority to decide them. * * * It is a remarkable fact that, in conservative England, so steadfast in adhering to ancient usage, the power to make changes is always ready to act, without question or form or delay, and the organic law is thus pliable and responsive to the wishes of the people; whilst in democratic America, innovation is guarded against with such jealous care that it is doubtful whether the means provided by law for making needed changes can ever be employed."[1]

Events show that this language is too strong; for, since it was written, in 1862, three Amendments have been made to the Constitution. Still it may admit of question whether the difficulties in the way of amending our organic law are not too great for the best good of the nation. These difficulties are forcibly presented in the work just quoted from.

When an Amendment has been proposed by two-thirds of both Houses of Congress, is the approval of the President necessary? It is only an expression of opinion by Congress that a certain Amendment is desirable, which Article Fifth contemplates, while the final decision in regard to it is to be made by other bodies. Then, again, a vote of two-thirds is good against the President's veto. We should infer, therefore, that the approval of the President is not necessary. And the practice has been, for the most part, not to submit the resolutions to the President for approval.

The First Congress proposed twelve Amendments. Nothing was said of the approval by the President.[2]

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[1] Fisher's Trial of the Constitution, p. 30.

[2] Annals of Congress I, p. 779.

The Amendment of 1794 — the Eleventh — was called in question because the President had not approved it; but the Supreme Court decided that his approval was not necessary.[1] When the Amendment of 1803 — the Twelfth — was before the Senate, they voted — twenty-three to seven — that it be not submitted. That proposed at the second session of the Eleventh Congress was not sent to the President for his approval. The first instance in which an Amendment proposed by Congress was sent to the President for his approval, was in March, 1861. The Amendment proposed as to slavery in the United States was approved by President Buchanan. The Amendment of 1865 — the Thirteenth — having been sent to the President through inadvertence, the Senate, without a division, decided that it should not constitute a precedent, and the Secretary of the Senate was instructed not to communicate to the House of Representatives the notice of the approval.

The Amendment of 1866 — the Fourteenth — was not submitted to President Johnson for his approval, of which he reminds Congress in a message and intimates that he would have vetoed it had the opportunity been offered.[2] The Fifteenth Amendment—February 27th, 1869 — was not sent to the President. With this uniformity of action by Congress, and the decision of the Supreme Court, we may say that the approval of the President is not essential to a resolution of Congress proposing Amendments to the Constitution.

An Amendment becomes valid when ratified by the legislatures of three-fourths of the States; that is, it becomes a part of the Constitution when the ratification has been made by the last State necessary to complete the constitutional number. Thus, the first ten Amendments, proposed by the First Congress, September 25th, 1789, were ratified by New Jersey November 20th of that year, then by others, till December 15th, 1791, when the ratification of Virginia took place, making eleven States, the whole number being fourteen. December 15th, 1791, is thus considered the date of these Amendments. The Eleventh Amendment was declared, in a message from the President to Congress, dated January 8th, 1798, to have been adopted by the requisite number of States, and the Amendment bears the date of the President's message. Of the adoption of the Twelfth Amendment public notice was given by the Secretary of State, September 25th, 1804. In 1818, an act was passed making it the duty of the Secretary of State, on receiving official notice from the States of the adoption of an Amendment by the requisite number, to cause the Amendment to be published, with his certificate, that it has been duly ratified. This act is still in force.

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[1] 3 Dallas, 378. [2] Senate Jour., 39th Cong., 1st Sess., p. 563.

A question has arisen as to the power of a State to withdraw her ratification of an Amendment to the Constitution. The legislature of New York ratified the Fifteenth Amendment, and subsequently voted to withdraw the ratification. The same was true of New Jersey and Ohio with regard to the Fourteenth Amendment. In the latter case the Secretary of State, after reciting the facts of the ratification by various States, including New Jersey and Ohio, and of the subsequent rejection by these two, proceeds: "I do hereby certify that if the resolutions of the legislatures of Ohio and New Jersey, ratifying the aforesaid Amendment, are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid Amendment has been ratified, etc."

Congress was not satisfied with this conditional notice of adoption, and the next day adopted a concurrent resolution, declaring the Fourteenth Amendment to be a part of the Constitution, and directing the Secretary of State to promulgate it as such. Congress has thus given its decision that a State can not withdraw its consent when once given to a Constitutional Amendment.

The correctness of this decision is beyond question. The Constitution declares that an Amendment duly proposed shall become valid when ratified by three-fourths of the legislatures of the several States. When a legislature has voted affirmatively on the question of ratification, the work of the State is done so far as regards that Amendment. That State is counted as in favor of it. Had the vote been a negative one, the State could not have been counted as in favor; neither could it had there been no vote. A State may reject an Amendment a hundred times, and then ratify it; the ratification counts just as much as if it had been made on the first vote. The Constitution knows nothing of any action of a State legislature touching a proposed Amendment, except its ratification. Whenever that comes it is counted. It may have been preceded by any number of rejections, and be followed by as many; it makes not the slightest difference. "Nothing but ratification forecloses the right of action. When ratified, all power is expended. Until ratified, the right to ratify remains."[1]

Another question has been discussed. In a time of rebellion, is a ratification of a proposed Amendment by the legislatures of three-fourths of the loyal States sufficient to make the Amendment valid? According to the views given in commenting upon Sections 3 and 4, of the previous Article, this question must be answered affirmatively. If a State has forfeited her right to participate in the ordinary legislation of the nation, if she is deemed unfit, because of the disloyalty of her people, to assist in enacting the ordinary laws, much less can she claim participation in the higher and more sacred work of changing the great organic law of the nation. A proposed Amendment to the Constitution is no more dependent upon the assent of a State holding such relation to the nation, than upon that of a Territory.

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[1] Governor Bramlette to the legislature of Kentucky, quoted by Jameson, p. 520.

But did not Congress direct the recent Amendments to be sent for ratification to the disloyal as well as to the loyal States? This was done, it is true; but this does not prove that their ratifications were essential to the validity of the Amendments. The explanation of the seeming inconsistency of Congress is to be found in the peculiar character of these Amendments as affecting the seceding States. They all had reference to the abolishment of slavery, and to the *status* of the freedmen. Congress made the ratification of these Amendments by those States a condition of their restoration to the Union. It was for this reason that the Amendments were sent to them, and not because such ratification was essential to their validity. They were all ratified by three-fourths of the loyal States, and would be valid without the assent of any of the others. The ratification by the disloyal States was simply the formal assertion by their legislatures of the principles contained in the Amendments, and was to that extent an evidence that they might be restored with safety to their former condition in the Union.

The Amendments — fifteen in all — will be made the subject of comment in subsequent pages. The dates when they were severally proposed and ratified are as follows:

The First Ten Amendments, proposed September 25th, 1789, ratified December 15th, 1791.

The Eleventh Amendment, proposed March 5th, 1794, ratified January 8th, 1798.

The Twelfth Amendment, proposed December 12th, 1803, ratified September 25th, 1804.

The Thirteenth Amendment, proposed January 31st, 1865, ratified December 18th, 1865.

The Fourteenth Amendment, proposed June 16th, 1866, ratified July 21st, 1868.

The Fifteenth Amendment, proposed February 27th, 1869, ratified March 30th, 1870.

Of the four Amendments proposed by Congress, but not ratified by the constitutional number of States, two were proposed by the First Congress, at the same time with the ten that were ratified. The third was proposed at the second session of the Eleventh Congress. The fourth was that relating to slavery, proposed March 2d, 1861, at the close of the Thirty-sixth Congress.

ARTICLE VI.

MISCELLANEOUS.

Clause 1.—*All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.*

A similar provision was made in the Articles of Confederation. There was a new Constitution, but the nation was the same. The nation under its new Constitution would be subject to all the obligations assumed before this Constitution had been adopted.

Clause 2.—*This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.*

The language of this clause is clear and explicit. The people of the United States established this Constitution for the United States. It was the work of the nation itself, and was binding in every part of the Republic. This clause was intended to affirm the supremacy of the national government over the State governments. If a law of a State, though in accordance with the constitution of that State, should be in conflict with the Constitution or a law of the United States, the former must yield. The judges in every State are expressly required to declare null and void any law of a State thus in conflict with a law of the United States, or with its Constitution.

The Constitution of the United States is the organic law, and all statutes, national and State, must be in conformity with its provisions. But there is this wide difference between the legislation of Congress and that of a State legislature. The former body is guided by the Constitution only. The latter must regard not only the National Constitution, but the laws enacted by Congress, as well as its own State constitution.

A law of the United States is binding until declared unconstitutional by the Courts. As already stated, the Supreme Court has declared very few acts of Congress unconstitutional since the Constitution was adopted.

An attempt was made by South Carolina, in 1832, to nullify certain laws of the Union, but it was promptly suppressed by President Jackson.[1]

Clause 3.—*The Senators and Representatives before mentioned, and the members of the several State legisla-*

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[1] Mr. John C. Calhoun's plan is here given as a curiosity. If Congress should pass a law objectionable to any State, the State might reject it, and require that it be submitted to the several States. If three-fourths of the States approved it, the State should submit; otherwise the law should be null and void so far as concerned that State.

tures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath, or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

This oath to support the Constitution is required of all officers, both national and State, and belonging to either of the three departments, executive, legislative, judicial. The Constitution itself (Article II, Section 2, Clause 7) prescribes the oath to be taken by the President of the United States. The first statute enacted under the Constitution was for the purpose of carrying into effect the present clause. On the first of June, 1789, a law was passed, prescribing the oath, as well as the time and manner of taking it, by the officers of the United States, and of the several States. Objection was made to the bill on the ground that, while an oath was obligatory upon all officers, State and national, there was no provision in the Constitution empowering Congress to pass a law enjoining the oath. To this it was replied that the general declarations of the Constitution could not be carried into effect without particular regulations adapted to the circumstances, and that these regulations must be made by Congress.[1]

The same objection has been made in numerous other instances, but the answer above given is sufficient. Were the objection to be regarded as valid, the wheels of government must stop. The Constitution is full of provisions requiring the performance of various duties, while no express power is given to Congress to pass laws prescribing the mode of performance. But Congress has always regarded itself as possessing the requisite power. In the first statute enacted under the Constitution, Congress decided that it had this power, and the law then enacted has remained in force to this day. In regard to a similar clause the Supreme Court held, that "the end being required, it is a just and necessary implication that the means to accomplish it are given also; or, in other words, that the power flows as a necessary means to accomplish the end. * * The national government, in the absence of all positive provisions to the contrary, is bound, through its proper departments, legislative, judicial, or executive, to carry into effect all the rights and duties imposed on it by the Constitution."

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[1] Annals of Congress, I, p. 266.

The act of June 1st, 1789, prescribed the following oath: "I, A. B., do solemnly swear, or affirm (as the case may be), that I will support the Constitution of the United States." On the second of July, 1862, a very stringent oath of office was prescribed for all persons who should be elected or appointed to any office under the general government. The act required the person to take oath that he had never taken arms against the United States, or aided its enemies; that he had not sought or held office under, or yielded any support to, any pretended government hostile to the United States. It was applied to attorneys in 1865.

This oath has been called the "iron clad oath," and it was this act which was pronounced unconstitutional by the Supreme Court, so far as it related to attorneys of that Court. In 1868 (July 11th), the retrospective part of the iron-clad oath was abolished for those persons having had participation in the late rebellion, from whom all legal disabilities shall have been removed by act of Congress, by a vote of two-thirds of each House. In 1871 (February 15th), the act of 1868 was made applicable to all who participated in the rebellion, who are not ineligible to office by the provisions of the Fourteenth Amendment.

The last clause — touching a religious test — provides for universal toleration. No desire has ever been manifested to remove this prohibition and introduce a religious test.

When the Convention of South Carolina ratified the Constitution, they proposed this among other Amendments—that the word "other" should be inserted after the word "no;" implying that an oath, or affirmation, to support the Constitution, was itself a religious test.[1]

ARTICLE VII.

RATIFICATION OF THE CONSTITUTION.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

The Articles of Confederation provided that no alteration should be made in them "unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every State." This provision was entirely disregarded in adopting the present Constitution, showing that those Articles were not regarded as any thing more than a provisional Constitution. They were in the "form of a compact among the States," in the language of Mr. Madison.

The PEOPLE, in whose name the Declaration of Independence was made on the fourth of July, 1776, had nothing to do with the Articles of Confederation. These had "no higher sanction than a mere legislative ratification."[2] The Convention had now framed a Constitution in the name of the people, by whom it was to be ratified. Thus the old Articles of Confederation were practically ignored by the Convention, and by the people of the United States.

In the resolution of the Continental Congress, adopted February 21st, 1787, which provided for calling the

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[1] Jour. Cont. Cong., XIII, p. 171.

[2] Federalist, No. 43.

Convention, it was stipulated that the Convention should report to Congress and to the several State legislatures for action by all these bodies. But the Convention, as seen in this Article, did not ask the ratification of their work, either by Congress or by the State legislatures; but by Conventions of the people. They not only ignored the old Constitution, they also disregarded the directions of Congress as expressed in the resolution under which the Convention itself had been called. In the Convention Mr. Madison said it was essential that the direct action of the people should be had; and that the new Constitution should be ratified in the most unexceptionable form by the supreme authority of the people themselves.

The Constitution was to be binding when ratified by the Conventions of nine States — two-thirds of the whole number. This was the number required under the Confederation for declaring war, making treaties, emitting bills of credit, etc.

The Constitution was signed by the members of the Convention, September 17th, 1787, and forwarded to Congress, with a resolution requesting that it be transmitted to the several States for ratification by Conventions. Another resolution was adopted by the Convention, making suggestions to Congress in regard to the mode of putting the Constitution into operation after it should be ratified. Accompanying these resolutions was a letter to the President of Congress, by George Washington, President of the Convention.

On the twenty-eighth of September, Congress voted unanimously to transmit the Constitution to the several State legislatures, to be by them submitted to "Conventions of delegates chosen in each State by the people thereof." It was ratified by Delaware, December 7th; by Pennsylvania, December 12th; by New Jersey, December 18th; by Georgia, January 2d, 1788; by Connecticut, January 9th; by Massachusetts, February 7th; by Maryland, April 28th; by South Carolina, May 23d; and by New Hampshire, June 21st. This made the requisite number of States.

On receiving the intelligence that the ninth State had ratified the Constitution, Congress appointed a committee to report a plan for putting the new government into operation. This Committee reported July 14th. On the thirteenth of September, final action was taken, providing for the election of the two Houses of Congress, and of a President and Vice-President, and appointing the fourth day of March as the day on which to commence proceedings. Before that day Virginia and New York had ratified the Constitution, making eleven States. North Carolina had rejected it, and Rhode Island refused to call a Convention. Both, however, ratified it subsequently; the former, November 21st, 1789, the latter, May 29th, 1790. It will be remembered that Rhode Island sent no delegate to the Convention that framed the Constitution.

The question naturally arises, what would have been the relation of these two States to the United States had they finally refused to ratify the Constitution. It has been held by some that their *status* would have been that of foreign nations. This view is believed to be untenable. While the Constitution was undergoing discussion in the Conventions, the question as to the relations to the others of any States that should not ratify it, was justly considered a very delicate one. The object of the friends of the Constitution was to induce every State voluntarily to adopt it; and to announce, beforehand, what would be the consequences of a refusal, might be construed into a threat, and so obstruct the attainment of the desired object.[1] Of this question Mr. Madison said, "The flattering prospect of its being merely hypothetical forbids an over curious discussion of it.

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[1] Farrar, p. 490.

It is one of those cases which must be left to provide for itself. * * Considerations of a common interest, and above all, the remembrance of the endearing scenes which are past, and the anticipation of a speedy triumph over the obstacles to reunion, will, it is hoped, not urge in vain *moderation* on one side, and *prudence* on the other."[1]

After the Constitution went into operation, this question soon came before Congress. On the fifth of June, 1789, a resolution was introduced into the House of Representatives, urging the legislature of Rhode Island to call a convention. In July a law was passed imposing a tonnage duty of fifty cents a ton on foreign ships. In September this was suspended as to Rhode Island and North Carolina till January 15th. In February (North Carolina having meanwhile ratified the Constitution), at the request of Rhode Island, the suspension was extended to April 1st. Thus the ships of the people of Rhode Island were regarded as ships of citizens of the United States, by the request of Rhode Island herself. Meanwhile the legislature had passed an act providing for a convention. On the eighteenth of May the Senate of the United States passed a bill prohibiting all commercial intercourse, and demanding a sum of money for her proportion of the expenses of the war. But before this was acted on by the House of Representatives, Rhode Island had made the desired ratification. Among the reasons urged in the House for not passing the Senate bill, was this: That Rhode Island was about to hold a convention; it would be pleasanter for all that she should come in freely; if the bill should pass and she were to come in, she would be like "a soldier pressed into the service, looked upon as unworthy to be ranged with the volunteers."

A careful study of the proceedings in Congress will show that steps looking toward coercion had already been taken; and that, had Rhode Island much longer refused to ratify the Constitution, she would have been compelled to choose between the condition of a State in the Union and that of a Territory or district under it. Rhode Island was a part of the domain of the United States, and she could not be allowed to alienate it.

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[1] Federalist, No. 43.

"Both Rhode Island and North Carolina were component parts of the nation; and no practical statesman will admit for a moment that they could have been permitted, by a permanent refusal to take part in the new government, to constitute themselves independent foreign nations in the heart of the Republic."[1]

"If nine States had ratified the Constitution, and the other four had stood out and refused to do it, which was within their competency, they would not have been independent sovereign States outside of the Union, but Territories under the Union."[2]

AMENDMENTS.

The Constitution makes provision for Amendments. Nineteen have been proposed by Congress, and fifteen have been ratified by the requisite number of States.

At the time the Constitution itself was ratified by the States, several of them recommended Amendments. In consequence of these recommendations, and to remove as far as possible all objections on the part of the people to the new Constitution, the subject was brought up in the First Congress, and the House of Representatives agreed, by the requisite vote of two-thirds, to seventeen Amendments. The Senate reduced the number to twelve. Ten of these were subsequently ratified by the legislatures of three-fourths of the States. The same Congress decided that the Amendments should not be incorporated into the text of the Constitution, but be appended to it, as a series of distinct provisions. They have been, therefore, numbered as so many distinct Articles. They have the same force as the original Constitution.

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[1] Farrar, p. 491. [2] Brownson, p. 288.

The first ten Amendments are of the nature of a bill of rights. Nothing of this distinctive character is contained in the original Constitution. A motion was made in the Convention for a committee to prepare such a bill, but it did not pass. Five States voted for it, and five against it; two were absent.[1] As the States in favor were Northern, and those against, Southern, the inference has been drawn by some that a bill of rights was excluded in the interest of slavery.[2] Others have contended that the Constitution itself was a bill of rights. The necessity of a distinct declaration of rights in the Constitution of a republican government is not so obvious as under a monarchy. Guaranties against hereditary monarchs may be needed, but the people hardly need such guaranties against themselves.

Article 1.—*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.*

This is a prohibition with reference to Congress; it imposes no restraint on the action of the States. It has been held that most of the Amendments proposed by the First Congress do not apply to the States, but to the national government alone. The several State constitutions contained provisions similar to those found in these Amendments, restricting the operation of those governments. It was, therefore, for the purpose of restraining the various departments of the general government that these ten Amendments were proposed. This is the view taken by the Supreme Court of the United States.[1]

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[1] Elliot, V, p. 538. [2] Farrar, p. 393.

Congress can not make any religion the established religion of the nation, neither can it do aught to prevent its free exercise.

By "the freedom of speech or of the press" is meant the right to speak and publish whatever is not in derogation of private rights, and which does not disturb the public peace or tend to subvert the government. There is danger, in a republican government, of carrying this freedom to excess, both in speech and in the press. We must be careful not to injure others in their rights of any kind, or weaken the authority of the government. Especially in times of insurrection or rebellion is abundant caution needed. Too much regard can not be paid to time and place and circumstances. "I believe in free speech," said the Duke of Wellington, "but not on board a man-of-war."

The right to assemble peaceably and petition for a redress of grievances is too obvious to have needed mention in the Constitution of a free people.

Article 2.—*A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.*

The militia are the citizen soldiery of the country, as distinguished from the standing, or regular, army. The militia system has been allowed to fall into partial decay, showing that the people have little fear of need to defend themselves by force of arms against their government.

Article 3.—*No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.*

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[1] 7 Wallace, 321.

This was a mode by which despotic rulers might oppress their subjects. To *quarter* soldiers in a house is to station them there for lodging and subsistence. This article recognizes the maxim of the common law, that a man's house is his castle. By *owner* is meant as well the occupant for the time being.

Article 4.—*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches, and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

This, like the previous article, is for the protection of the citizens. As soldiers could not be quartered upon them, so unreasonable searches and seizures are prohibited, and every search or seizure must be made by special, and not by general, warrant.

Article 5.—*No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.*

Article 6.—*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of* *the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*

Article 7.—*In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

These three articles have already been considered in connection with Article III, Section 2, Clause 3, of the Constitution.

Article 8.—*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

It has been maintained, as already stated, that this article refers to the national government, and not to the State governments; and the same has been held concerning some of the articles that precede it. "The first ten Amendments were manifestly adopted from superabundant caution, as these rights were already sufficiently guarded by the State constitutions and bills of rights."[1]

While some maintain that this Amendment, as well as most of those which precede it apply to the State governments as well as the national,[2] the Courts have taken the other view. The language of the Fourteenth Amendment seems to imply the same, as in it the States are prohibited from doing what the Fifth Amendment prohibits. If the Fifth applies to the State governments, what need of the same prohibitions in the Fourteenth?

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[1] Duer, p. 344. [2] Farrar, p. 396.

Article 9.—*The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.*

The very language of this article shows the impossibility of making any complete enumeration of rights. The inference might be drawn from some of the preceding articles, that what has not been therein prohibited, the government has the power to do. This article was inserted to prevent such an inference, by the declaration that other rights not specifically mentioned are not therefore to be denied. But what others? The matter is left in fact just where it was before any specific rights were enumerated.

It was well said by Mr. Hamilton "That bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. * * * They have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing, they have no need of particular reservations. * * * The truth is, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS."[1]

Article 10.—*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

No part of the Constitution has been so often incorrectly quoted as this. The word "expressly" has been interpolated before the word "delegated," and many, perhaps, believe the Constitution to speak of powers

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[1] Federalist, No. 84.

expressly delegated to the United States. But the word is not in the Constitution, either in this article or in any other. It *was* in the Articles of Confederation, which was not a real constitution, but only an agreement between the States. It was not strange that the declaration was there made that "Each State retains every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States."

A motion was made, when this Amendment was under consideration in Congress, to insert the word "expressly," but it was not carried. Mr. Madison objected to it, "because it was impossible to confine a government to the exercise of express powers; there must necessarily be admitted powers by implication unless the Constitution descended to recount every minutia."[1] A few days afterward the motion was renewed, and again it was lost.[2]

This Tenth Amendment has not only been misquoted, its meaning has been strangely perverted. Says Dr. Cooper, "Congress, under the Constitution of 1787, and its Amendments, can exercise no rights or powers but such as are expressly enumerated and delegated, or that necessarily and unavoidably flow from those that are. Every other right and power is reserved by and remains vested in the States; to be delegated or not."[3] There is no such doctrine as this in the Constitution; if found anywhere, it is in the old Articles of Confederation. It is not strange that those who could see this in the Constitution could also find secession, nullification, lack of right to coerce the individual States by the general government, and want of jurisdiction in the Supreme Court in questions between a State and the United States.

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[1] Annals of Congress I, p. 790. [2] Ibid, p. 797.

[3] Statutes of South Carolina, I, p. 217.

The meaning of the Amendment is plain. The people of the United States are the source of power. They have established a kind of double government, that of the United States and that of the several States. The people of the United States have authorized the general government, known as the United States, to exercise large powers, and in the same Constitution have made various prohibitions upon the State governments. Whatever there may be of the nature of governmental power, which has not been thus authorized to the general government, nor prohibited to the States, the people of the States may delegate to the States, or they may retain it undelegated. The States, as governmental corporations, have delegated nothing; they have retained nothing. The *people* of a State may insert in their own constitution any power not already inserted by the whole people in the Constitution of the United States, and not forbidden by the whole people to be inserted in a State constitution.

The distinction between the *people* and the *government* must never be lost sight of. The people make constitutions; governments carry on the legislative, executive, and judicial departments of civil society in conformity with the Constitution thus made by the people. This is true of the whole people and of the people of the several States. The people of the United States are under no restrictions as to the powers with which they may clothe their government, except those that are imposed by the great rules of justice and right. But the people of a State are restricted. They may not confer on their State government any powers which the whole people have conferred on the United States government, nor any which the whole people have said shall not be exercised by the State governments. "What is not conferred by the Constitution is withheld, and retained by the State governments, if vested in them by their Constitutions; and if not so vested, it remains with the people, as a part of their residuary sovereignty. * * It is a general principle that all bodies politic possess all the powers incident to a corporate capacity, without any express declaration to that effect; and one of those defects of the Confederation which led to its abolition, was its prohibiting Congress from the exercise of any power 'not *expressly* delegated.'"[1]

These ten Amendments were proposed by Congress September, 25th, 1789, and ratified December 15th, 1791.

Article 11.—*The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.*

This Amendment, which has been considered already in connection with the Judiciary, was proposed March 5th, 1794, and ratified January 8th, 1798.

Article 12.—This Amendment, relating to the election of President and Vice-President, was given in full (p. 166,) when treating of the Executive Department. It was proposed December 12th, 1803, and was officially declared to be ratified September 25th, 1804.

Article 13, Sec. 1.—*Neither Slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

Sec. 2.—*Congress shall have power to enforce this article by appropriate legislation.*

Until this Amendment was made, the word *slavery* was not to be found in the Constitution. If the idea was there, it was expressed by a euphemism. Even the Amendment proposed by Congress, March 2d, 1861, to which allusion has already been made, spoke of "persons held to service or labor." But now that the institution was to be abolished, it was called by its own name.

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[1] Duer, p. 345.

Slavery had already been abolished by act of Congress in the District of Columbia, April 16th, 1862, and in the Territories, June 19th, of the same year. The President had also, by proclamation, January 1st, 1863, declared all slaves in the rebel States free.

The resolution for the abolition of slavery was passed by two-thirds of the Senate, April 8th, 1864. But the requisite majority was not secured in the House till the following winter. It was adopted, January 31st, 1865, and transmitted to the States. The ratification by the requisite number of States was announced December 18th of the same year.

Mr. Secretary Seward, in his certificate, that the Amendment had become valid as a part of the Constitution of the United States, named twenty-seven States —three-fourths of thirty-six—as having ratified it. Of these, eight had been in the Rebellion; and though they had formed new free-State constitutions, under the Proclamations of Presidents Lincoln and Johnson, none of them had been formally restored to the Union by act of Congress. There were then nineteen loyal States that had ratified this Amendment, and four others did so subsequently to the date of the certificate. According to the view taken in this work, that a proposed Amendment becomes valid when ratified by three-fourths of the loyal States, the Thirteenth Amendment was truly a part of the Constitution at the date of the Secretary's certificate, nineteen of the twenty-five loyal States having ratified it.

Those who think the ratifications of three-fourths of the whole number of States requisite, maintain the legality of the ratification in this way. The eight insurrectionary States that ratified this Amendment had been reconstructed in accordance with executive proclamations, though without any official recognition by Congress. But as this body had not disapproved of this reconstruction, and as this Amendment had been sent to these States for ratification, Congress did give a kind of passive approval of the executive policy of reconstruction, and so virtually recognized them as States. When, subsequently, (March 2d, 1867), Congress declared these eight with two others to be in a state of insurrection, the act has no retrospective effect.[1]

If the consistency of Congress is called in question in thus seeming to recognize these eight States by asking for, and receiving, their ratifications of the proposed Amendment, and subsequently refusing admission to their Senators and Representatives, the explanation must be left to Congress. But whether these eight were veritable States under the Constitution, or not, there can be no doubt that the Thirteenth Amendment has been duly ratified by three-fourths of the loyal States, if those only should be counted, or by three-fourths of the whole.

The second clause of the Amendment seems wholly superfluous, as Congress has the same power to enforce this as any other provision of the Constitution.

Article 14, Section 1.—*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.*

This Amendment was proposed by Congress, June

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[1] Skinner's Issues of American Politics, p. 204.

16th, 1866, and was declared to be a part of the Constitution, July 21st, 1868, by the action of Congress. The Secretary's proclamation is dated July 28th.

The Thirteenth Amendment abolishes slavery throughout the United States. According to the opinion given by Mr. Justice Swayne, as already quoted, the emancipation of a slave removes the obstacle to his citizenship. Aliens become citizens by naturalization; slaves, by emancipation. The act passed by Congress in April, 1866, known as the Civil Rights Bill, gave expression to this opinion. It declared all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, to be citizens of the United States. It conferred upon the freedmen all the rights, and made them liable to all the obligations of citizens. But it was doubted by some whether a mere act of legislation could confer citizenship, and whether it did not require the authority of the Constitution itself. To make sure the citizenship of the emancipated population, the principle of the Civil Rights Bill was embodied in this Fourteenth Amendment.

While the first section had its origin in the purpose of the people to protect the colored population, the language is not restricted to them, but is applicable as well to all the citizens of the country. And as it has been maintained that the first eight Amendments had no reference to the State governments, but were restraints upon the general government only, this Fourteenth Amendment declares explicitly that "No *State* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

In April, 1871, an act was passed to enforce the provisions of this Amendment. It was rendered necessary, in the judgment of Congress, in consequence of the treatment received by the colored people of certain States of the South, and the failure of those States to afford them the protection required by the Constitution. The act is known as the Ku Klux Bill. It provides that the failure of a State to protect any portion of its people against unlawful combinations shall be deemed a denial of the protection guaranteed in this amendment. Under this act the President suspended the writ of *habeas corpus* in certain counties, and suppressed the combinations.[1] In March, 1875, an act was passed entitling all persons to the full and equal enjoyment of inns, public conveyances, places of amusement, etc.

Section 2.—*Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.*

So long as there were slaves, three-fifths of them were counted in order to ascertain the population of a State, and thus the number of Representatives to which the State was entitled. But slavery having been abolished, Representatives must be apportioned among the States according to their respective numbers.

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[1] For a severe criticism of the law see Skinner, p. 316.

The number of Representatives being in proportion to the whole population of the States, including those that are colored, if suffrage were denied to this class, the former slave States would have delegations in Congress much larger, in proportion to the number of voters, than the original free States. To remedy this inequality was the object of this second section. The States are not required to allow the blacks the right of suffrage; but if they do not allow it, their representation in Congress will be proportionably diminished. They may take their choice between general suffrage and more Congressmen, or white suffrage and fewer Congressmen.

This section implies the normal case of suffrage to be this: that all male citizens of twenty-one years of age may vote. For it provides that if any such are not allowed by their State to vote, the number of Representatives in such State shall be diminished. This seems to throw the moral influence of the Constitution in favor of universal suffrage. There is nothing, however, to prevent any State from prescribing a qualification of intelligence, or one of property. But as this Amendment would reduce the number of Representatives in a State, should any large number of voters be found not to possess the required qualification, the probability of suffrage limitation is rendered less than before.

It has been claimed that this Amendment establishes the principle of woman suffrage. Does it? The first section declares who are citizens. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens. They are citizens as soon as born. Children are citizens as well as men and women. Citizenship and suffrage, then, are not the same. This section confers *civil* rights, but not *political.* A State is prohibited from interfering with civil rights, but nothing is said of suffrage.

The second section provides that if in any State any *male* citizens of *twenty-one* years of age are denied the rights of voting, the State shall suffer by a proportionate reduction of the number of Representatives in Congress. If citizenship implied the right to vote, no State *could* deprive a constitutional citizen of that right. The very supposition, in the second section, that a State *may* deny the right to vote to some whom the Constitution declares to be citizens, is proof that one may be a citizen and yet be unable to vote; and, therefore, the conferring of citizenship is not the conferring of the right of suffrage.

Again, those whom a State may not with impunity deprive of the right of suffrage, have two requisites: they are *males*, and of the age of *twenty-one years.* A State may prevent others from voting as much as she pleases; the Constitution contains no inhibition, and affixes no penalty for such prevention. If the first section gives women the right to vote, the second permits a State to take the right away. Virtually the Constitution in this Amendment indicates the essential requisites for the exercise of suffrage. Voters must be *male* citizens of the age of *twenty-one.* These two are placed in the same category, and hold precisely the same relation to suffrage. If the right to vote belongs by this second section to one not a male, by the same reasoning it belongs to one not twenty-one years old. The real meaning is, that as males under twenty-one are not expected to vote, so women are not expected to do it. Provision was made to enforce this section in the act of Congress, passed February 2d, 1872.

Section 3.—*No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States,* *or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.*

This section needs little comment. Those who, as officers under a State or the Nation, had sworn to support the Constitution of the United States, and then engaged in rebellion, are precluded from again holding office, except Congress, by a vote of two-thirds, shall remove the disability.

Article II, Section 2, of the Constitution gives the President power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. It is doubted whether cases of amnesty were intended to be included. Early in the war, July 17th, 1862, Congress authorized the President to issue proclamations of amnesty. This was done by President Lincoln and by President Johnson. In January, 1867, the authority was withdrawn by Congress, but President Johnson nevertheless issued other proclamations even after the ratification of this Amendment. Whether he had the authority to issue such proclamations after the repeal of the provision referred to, is doubtful; but certainly he had no power, after the adoption of this Amendment, to absolve from their guilt any offenders included under its provisions. As the second section of Article II of the Constitution gave the pardoning power to the President, so this third section of the Fourteenth Amendment repealed that power so far as applicable to the classes named therein.

The disabilities imposed by this section were removed from many persons mentioned by name in the several acts, and, in May, 1872, Congress passed a general act, removing such disabilities from all except Senators and Representatives of the Thirty-sixth and Thirty-seventh Congresses; officers in the judicial, military, and naval service of the United States; heads of departments, and foreign ministers of the United States. These classes will hardly remain exceptional long.

Section 4.—*The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.*

This section had immediate reference to the existing public debt, which was incurred in suppressing the rebellion; but the language is general, and therefore applicable to all public debts. The prohibition as to the payment by the United States or any State of any part of a debt incurred in aid of insurrection or rebellion against the United States, is also general. The measure is one of obvious security, as under the reconstruction laws many of those formerly in the rebellion have been admitted again to the State and National legislatures. It is better for all to have the question settled by the adoption of a clause in the organic law itself.

Section 5.—*The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

The same remark may be made of this as of the corresponding section in the Thirteenth Amendment; it seems to be unnecessary. Whatever the Constitution requires, Congress has the power to carry out by appropriate legislation, whether there be specific provision for it or not.

Article 15, Sec. 1.—*The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.*

Sec. 2.—*The Congress shall have power to enforce this article by appropriate legislation.*

The second section of the Fourteenth Amendment was intended to secure suffrage to the freedmen. This was to be done indirectly, however. The right of suffrage was not conferred upon the colored race by a direct affirmative grant, but the States which should withhold it were to have their number of Representatives in Congress reduced in proportion. The measure was not attended with the success which was anticipated. The enfranchisement of the colored race was deemed indispensable to their own safety and to the prosperity of the nation; and the first plan to secure it having failed, a second was proposed. Hence this Fifteenth Amendment. It declares expressly that the right of citizens to vote shall not be denied or abridged on account of race, color, or previous condition of servitude. The Fourteenth Amendment declared the colored race to be citizens, and thus gave them all civil rights; and the Fifteenth secures them suffrage, and thus bestows upon them political rights.

This article does not, of course, imply that all citizens possess the right to vote. We have seen that the Fourteenth Amendment declares children, as well as adults, to be citizens; showing that to make the right of suffrage co-extensive with citizenship would be simply absurd. The meaning is that the right to vote of those citizens who enjoy the right, to wit., males of twenty-one years, shall not be denied on account of race, color, or previous condition of servitude. It may not be denied for either of these three causes, but it may for any other. The freedmen are put upon an equality with others as to the right of suffrage. If an educational qualification is required, it will apply to the whites as well. So with a property qualification. Virtually, this Amendment establishes universal suffrage; and while some great evils were in this way prevented, the extension of the elective franchise to a large number of ignorant persons, can not be viewed but with deep regret, and with grave foreboding. Weighty obligations rest on all intelligent citizens to extend to this class of our population the opportunities of education, that they may vote intelligently.

The right to vote implies the right to be voted for.

In May, 1870, Congress enacted a stringent law "to enforce the right of citizens of the United States to vote." It was amended in February, 1871.

This Fifteenth Amendment was proposed by Congress, February 27th, 1869, and declared to be duly ratified March 30th, 1870.

AMENDMENTS PROPOSED BUT NOT RATIFIED.

Besides the fifteen Amendments which have become a part of the Constitution, four have been proposed by Congress but not ratified by the legislatures of three-fourths of the States. Two of these were proposed by the First Congress. Twelve were proposed, of which the last ten were ratified. The others were as follows:

1. After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons until the number of Representatives shall amount

to two hundred; after which the proportion shall be so regulated by Congress that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

2. No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

The following Amendment was proposed by the Eleventh Congress at their second session:

3. If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them or either of them.

The fourth of the Amendments proposed but not ratified was at the close of the Thirty-sixth Congress, March 2d, 1861. It has been quoted on a former page.

4. No Amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.

CHAPTER V.

THE RATIFICATION OF THE CONSTITUTION BY THE SEVERAL STATES.

The Convention which formed the Constitution met in Philadelphia on the second of May, 1787, but the organization was not effected till the twenty-fifth. George Washington was appointed President. All the States were represented but Rhode Island. Connecticut did not send a delegation till a fortnight after the time appointed, and New Hampshire was not represented till the twenty-third of July.

The Constitution was adopted by the Convention on Saturday, September 15th, and signed by the members on Monday, the 17th. In the Convention the vote was by States, and as two of the three delegates from New York — Messrs. Lansing and Yates — had withdrawn when it was decided to form a new Constitution instead of revising the Articles of Confederation, the Constitution was adopted by the delegates from eleven States. It was thought desirable that the instrument should go forth to the public with the signatures of the individual delegates, as well as the official attestation of the Convention. The following was the form: "Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord 1787, and of the Independence of the United States the twelfth. In witness whereof, we have hereunto subscribed our names." All the delegates present signed it except Messrs. Randolph and Mason from Virginia, and Mr. Gerry from Massachusetts. New York was not officially present in the

Convention, but the instrument bears the signature of Alexander Hamilton, from that State, who took a most prominent part in its deliberations.

The following resolutions, adopted by the Convention, were transmitted to Congress, with a copy of the Constitution, accompanied by a letter from the President:

"In Convention, Monday, September 17th, 1787.

"*Resolved*, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention, assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled.

"*Resolved*, That it is the opinion of this Convention, that as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled, should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication the electors should be appointed, and the Senators and Representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening, and counting the votes for President; and that, after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

"By the unanimous order of the Convention,

"George Washington, *President.*

"William Jackson, *Secretary.*"

The resolution of Congress, adopted February 21st, 1787, recommending that a Convention should be held for the purpose of revising the Articles of Confederation, contemplated that those alterations, after being agreed to by Congress, should be confirmed by the States. But the Convention, in the resolutions transmitted to Congress with a copy of the Constitution, proposed that this confirmation should not be by the States, *i. e.*, by the legislatures of the States, but that the instrument should "be submitted to a convention of delegates, chosen in each State by the people thereof."

The Articles of Confederation had been adopted by Congress and ratified by the legislatures of the several States. They had never been submitted to the people. It was expected that the alterations would be submitted to the legislatures and not to the people. The Convention thought, however, that if the adoption of the new Constitution were to be referred to the State legislatures it would not rest on the direct authority of the people.

The Articles of Confederation could not be amended without the assent of all the States; but the Constitution was to go into effect when nine of the thirteen should have ratified it. The Convention, therefore, "had prepared a system of government that would not merely alter, but would abolish and supersede the Confederation; and they had determined to obtain, what they regarded as a legitimate authority for this purpose, the consent of the people of the States, by whose will the State governments existed."[1] The Articles of

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[1] Curtis's History of the Constitution, II, p. 481.

Confederation were the work of Congress and the State governments. The people had no participation in them. They were not made in the name of the people. But the Constitution framed by the Convention of 1787 was in the name of the people; and, should it go into operation, would derive its validity from the people themselves. Prior to the adoption of the present Constitution, the United States were strictly without any written Constitution. They had a government, and the relation of the States to the Nation was virtually the same as now; but their respective duties had not been definitely stated, and there was no little friction in the working of the governmental machinery. The members of the Convention had great hopes that the new Constitution would be found to remedy these evils, and in this they were not disappointed.

Congress having received the report of the Convention, on September 28th, adopted the following resolution: "*Resolved*, unanimously, that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates, chosen in each State by the people thereof, in conformity to the resolves of the Convention made and provided in that case." Congress, it will be seen, merely transmits the Constitution to the State legislatures, without either approval or disapproval. This was what the Convention had requested, though a vote of approval would have facilitated its adoption in the conventions of the States. But some opposition was made in Congress to the Constitution, and to obtain unanimity it was necessary, says Mr. Madison, to couch the resolution in very moderate terms. It was first contended that Congress could not properly give any positive countenance to a measure which had for its object the subversion of the Constitution under which they acted. This objection having been answered, an effort was made to amend the Constitution by inserting a bill of rights, trial by jury in civil cases, etc. Had this effort been successful, it would, without doubt, have defeated the Constitution, as two instruments would have been placed before the people for their ratification.

The Convention had kept their proceedings secret, and there was consequently great anxiety to know the character of the new Constitution. Singular rumors were circulated, among which was one that a system of monarchical government had been framed, and the monarch designated in the person of one of the sons of George III. But, two days after the Convention adjourned, the new Constitution was published in the newspapers of Philadelphia, thus dispelling all doubt in regard to it.

"It met every-where with warm friends and warm opponents." Mr. Curtis classifies its advocates thus: first, a large body who regarded it as the admirable system which it proved to be when put into operation; second, those who believed it to be the best attainable government that could be adopted by the people of the United States, over-looking defects which they acknowledged, or trusting to the power of amendment which it contained; and, third, the mercantile and manufacturing classes who regarded its commercial and revenue powers with great favor. "Its adversaries," he says, "were those who had always opposed any enlargement of the federal system; those whose consequence as politicians would be diminished by the establishment of a government able to attract into its service the highest classes of talent and character, and presenting a service distinct from that of the States; those who conscientiously believed its provisions and powers dangerous to the rights of the States and to public liberty; and, finally, those who were opposed to any government, whether State or national or federal, that would have vigor and energy enough to protect the rights of property, to prevent schemes of plunder in the form of paper money, and to bring about the discharge of public and private debts."

The legislatures of all the States, except Rhode Island, called conventions of the people to act upon the Constitution, though in some of them there was strong opposition. Thus in New York the resolutions for a convention were passed by majorities of only three in the Senate and two in the House; and this on the first of February, 1788, when five States had already ratified the Constitution.

The first ratification was by Delaware, on the seventh of December, 1787. It was done unanimously, and without the recommendation of any amendment.

Pennsylvania was the second to ratify. This was done, without declaration or recommendation, on the twelfth of December, by a vote of 46 to 23.

New Jersey ratified the Constitution December 18th. Her vote was unanimous.

The next was Georgia, which was also unanimous in her ratification. It was done January 2d, 1788.

Connecticut followed on the ninth of January, ratifying without any declaration, and without recommendations, by a vote of 128 to 40.

The convention of Massachusetts commenced its sessions on the ninth of January, the day of the ratification by Connecticut, and continued in session till the seventh of February. The discussion was warm and able, and the Constitution was ratified at last by a majority of only 19 in a Convention of 355. Nine amendments were recommended, two or three of which were included in the amendments proposed by the First Congress.

Maryland passed a vote of ratification April 28th. The vote stood 63 to 11, and there were no amendments or resolutions.

South Carolina ratified the Constitution May 23d, 1788, by a vote of 149 to 73. Several amendments were recommended.

The ninth State was New Hampshire. Her ratification was made, June 21st, 1788, by a majority of 11. The convention had assembled in February, but after a warm discussion had adjourned to the eighteenth of June. Three conventions were in session at the same time: that of Virginia having convened June 2d, and that of New York on the 17th. New Hampshire accompanied her ratification with twelve amendments, of which three were subsequently embodied in the amendments proposed by Congress.

As the Constitution was to become binding when nine States had ratified it, New Hampshire completed the number. As soon as the intelligence of her action reached Congress, a committee was appointed to report an act for putting the Constitution into operation.

The tenth State in the order of ratification was Virginia. She ratified on the twenty-fifth of June, by a vote of 89 to 79.[1] It should be stated that this vote was taken before the convention knew of the action of New Hampshire. The members of the Virginia Convention supposed that by her ratification she would make the number complete. The convention proposed many amendments, and accompanied their ratification with a declaration of rights. "We, the delegates of the people of Virginia, * * * do, in the name and in behalf of the people of Virginia, declare and make known that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whenever they shall be perverted to their injury or oppression, etc."

This shows very clearly the opinion of the majority of the members of the convention as to the source of the powers granted under the Constitution. They came, not from the States, but from the people of the United States.

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[1] The date usually given is June 26th. The vote of ratification was on the 25th; an engrossed form of the ratification was read and signed by the president on the 26th. Elliot, III, p. 656.

New York was the eleventh State to ratify the Constitution. The opposition was very strong, and it was for some time doubtful whether the vote of ratification could be carried. It will be remembered that two of the three delegates sent by New York to the Convention which framed the Constitution, left the Convention when they became satisfied that a new instrument would be framed. These two delegates—Messrs. Lansing and Yates—as well as Mr. Hamilton, were in the State convention. A form of ratification was proposed which provided that the act of ratification was made "on condition" that Congress would not exercise certain powers till a general Convention should be called for proposing amendments. The words "on condition" were finally stricken out, and the words "in full confidence" substituted; though the vote was 31 to 29. In this form the ratification was voted, 30 to 27, on the twenty-sixth of July.

A long declaration of rights was made, and a great number of amendments proposed.

The convention of North Carolina commenced its session July 21st, but adjourned on the 2d of August, after passing a resolution that a declaration of rights and certain amendments ought to be laid before Congress and a convention which might be called for amending the Constitution, previous to its ratification by North Carolina. This was adopted by 184 to 84. More than a year later another convention was held, and, on the twenty-first of November, 1789, North Carolina ratified the Constitution by a majority of 11. This was more than eight months after the Constitution had gone into operation. This ratification was accompanied with a bill of rights and many amendments, mostly like those of Virginia. It should be noted that delegates from North Carolina, and one of those from Rhode Island, continued in Congress to the last, and delegates from both States voted on questions pertaining to the Constitution as late as August 6th, 1788.

Rhode Island sent no delegates to the Convention which framed the Constitution. When that instrument was received from Congress, the legislature caused it to be published and circulated among the people, but did not call a convention to ratify it. Instead of this they referred the adoption of it to the people in their town meetings for the purpose of having it rejected. There were but four thousand legal voters in the State, and of the small minority who favored the adoption of the Constitution few voted. The votes against it were 2,708; those in favor, 232. This was in March, 1788. After an interval of more than two years, Rhode Island, called a convention, and the Constitution was ratified on the twenty-ninth of May, 1790.

The ratification of New Hampshire, which was the ninth in order, was received by Congress July 2d, 1788. A committee was appointed on the same day to examine the various ratifications and report an act for putting the Constitution into operation. The only member who voted against the appointment of a committee was Mr. Yates, of New York, who left the Constitutional Convention, and voted against the ratification of the Constitution in the convention of New York.

The committee reported, on the fourteenth of July, an act which was debated till the thirteenth of September, when the following resolution was adopted:

"*Resolved*, that the first Wednesday in January next be the day for appointing electors in the several States, which, before the said day, shall have ratified the said Constitution; that the first Wednesday in February next be the day for the electors to assemble, in their respective States, and vote for a President; and that the first

Wednesday in March next be the time, and the present seat of Congress the place, for commencing proceedings under the said Constitution."

The first Wednesday in March of the year 1789 happened to be the fourth day, which thus became the initial day of our governmental year. On the fourth of March each new Congress commences its existence, and on this day the President is inaugurated.

Elections of Senators and Representatives were held, and electors of President were appointed, in accordance with the act of Congress, and the first Congress under the Constitution met on the fourth of March, 1789. For want of a quorum the organization was not effected till the first of April in the House, and the sixth of April in the Senate. The electoral votes were then counted in the presence of both Houses.

George Washington was found to have been elected President by a unanimous vote (69); and John Adams was declared Vice-President, as having the next highest number (34), though it was less than a majority. Mr. Adams took the chair as President of the Senate April 21st, and General Washington was inaugurated President April 30th, 1789, in the city of New York.

Thus quietly the government went into operation under the new Constitution. It was extraordinary that a President should have been unanimously elected, when we remember the great opposition which the Constitution encountered, and that the new President had presided over the Convention which framed the instrument. At the expiration of his first term President Washington was again elected by a unanimous vote; fifteen States now voting while before there had been but ten. Vermont and Kentucky had been admitted into the Union before the second Presidential election. Since the administration of President Washington, no President has received the votes of all the electors.

Those who had opposed the Constitution in the State conventions gave in their acquiescence when they found that the people had voted to ratify it. The dangers which had been feared were found to be imaginary. The Constitution has proved itself to be just what the nation needed. Once only has there been a determined effort to overthrow it. And this would not have been made had it not been that the slave-holding States thought their interests would be promoted by a dissolution of the Union. To effect this, they placed upon the Constitution an interpretation the opposite of that attributed to it by those who opposed its ratification in 1787 and 1788. Patrick Henry, and those who agreed with him, would not ratify the Constitution because it was the Constitution of a Nation and not a league of States. In 1861 the people of a portion of the States claimed the right of peaceable secession, because, as they affirmed, the government was a league. Had it been so understood when the adoption of the Constitution was under discussion in the State conventions in 1788, those who were the most strongly opposed to it would have been the most eager to adopt it.

CHAPTER VI.

THE ADMISSION OF NEW STATES — THE TERRITORIAL GOVERNMENTS.

At the birth of the Nation — July 4th, 1776 — there were thirteen States; there are now—1878—thirty-eight. The Constitution went into operation when only eleven had ratified it; but the other two gave their ratifications shortly after—North Carolina, November 21st of the same year, and Rhode Island on the twenty-ninth of May, 1790. The relation of these two to the others, if they had refused to ratify, has been discussed in a former chapter (page 261).

Congress has admitted twenty-five new States into the Union. Of these, twelve were formed from territory belonging to the United States, or to individual States when the Constitution was adopted; and eight of the others came from the Louisiana purchase.

Classifying them as to their *modes of admission*, *four* were formed from other States, *nineteen* existed as organized Territories, *one* was admitted without having had a territorial government, and *one* was annexed.

The first State admitted into the Union after the adoption of the Constitution was VERMONT. The people of Vermont, in January, 1777, proclaimed themselves a free and independent State, under the name of the New Hampshire Grants. In December of that year the same convention which had proclaimed the independence of the State, adopted and put into operation a constitution. But as the territory was claimed by New York, opposition was made by that State to her admission into the Union. It was not till October

17th, 1790, after the adoption of the Constitution of the United States, that New York, by her commissioner, consented to relinquish her claim to soil and jurisdiction, Vermont paying the sum of thirty thousand dollars. The formal consent of New York was given March 6th, 1790, by her legislature. Application was made by Vermont for admission, February 9th, 1791, and an act, to take effect on the fourth of March, was approved February 18th. Vermont, the first of the new States, thus became an integral part of the Union *March 4th*, 1791. She came in with the constitution which her convention had adopted fourteen years before, and which has remained substantially the same to the present time.

KENTUCKY was the next new State; it was admitted *June 1st*, 1792. As Vermont was formed from a part of New York, so Kentucky was formed from a part of Virginia. The question of forming a new State from that portion of Virginia known as the district of Kentucky, began to be agitated as early as 1784. A number of conventions were held, but no results followed till December 18th, 1789, when Virginia passed an act giving her consent to a separation, to take place June 1st, 1792. On the fourth of February, 1791, Congress, in answer to a petition from a convention in Kentucky, consented to her admission, which was to take place *June 1st*, 1792, according to the agreement with Virginia.

The third State admitted into the Union was TENNESSEE, *June 1st*, 1796. This was originally a part of North Carolina. Like Vermont, Tennessee had early in the war with Great Britain proclaimed herself independent; and she had set up a government in defiance of North Carolina. She called herself the State of Frankland, elected officers, and attempted to defend herself by force of arms. The rebellion was, however, suppressed.

In February, 1790, North Carolina made a cession of her western territory to the United States, with this, among other conditions, "That the territory so ceded shall be laid out and formed into a State or States, containing a suitable extent of territory, the inhabitants of which shall enjoy all the privileges, benefits, and advantages, set forth in the ordinance of the late Congress for the government of the western territory of the United States."

On the second of April of the same year, Congress accepted the cession, and, on the twenty-sixth of May, passed an act organizing the Territory. In July, 1795, the territorial legislature ordered a census to be taken to ascertain whether the population amounted to 60,000; this number entitling the Territory to admission into the Union as a State, by the terms of the ordinance of 1787 and the deed of cession. The census showing a sufficient population, a convention was called to form a State constitution. This body met in January, 1796, and on the sixth of February adopted a constitution. A copy was forwarded to the President of the United States in the same month, with a notification that on the twenty-eighth of March the territorial government would cease. The peculiar action of Tennessee in demanding rather than asking admission into the Union is to be explained by her understanding of the ordinance of 1787. A very earnest debate followed, but finally an act for admission was passed; it was approved *June* 1*st*. Tennessee was the first State admitted which had been previously governed as a Territory.

There had been thus three new States admitted into the Union before the close of the century: Vermont, Kentucky, and Tennessee. The first in this century was OHIO, admitted *February* 19*th*, 1803; which, though the seventeenth at the time of her admission, has long held the third rank in population. The old States had ceded to the United States all their claims of jurisdiction, and, with a few exceptions, of soil, to territory lying north-west of the Ohio River. In the summer of 1787, while the Convention was framing the Constitution, at Philadelphia, Congress at New York passed an "Ordinance for the government of the territory of the United States north-west of the River Ohio." This was the most important act performed by Congress under the Articles of Confederation. "Never, probably, in the history of the world, did a measure of legislation so accurately fulfill, and yet so mightily exceed, the anticipations of the legislators." (Chase, Statutes of Ohio.) Its object was declared to be to "extend the fundamental principles of civil and religious liberty which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which, forever hereafter shall be formed in the said Territory." (The ordinance in full may be found in the Appendix.)

The Territory embraced all the land which belonged to the United States north-west of the Ohio River, and all to which Great Britain had any claim at the time of the treaty of 1783. It extended from Pennsylvania to the Mississippi, and from the Ohio to the great lakes. The ordinance provided for its division into three States; or five, if the people should prefer. Five States have been organized: Ohio, Indiana, Illinois, Michigan, and Wisconsin. The territorial government was organized soon after the passage of the ordinance. The government was vested in a Governor and Judges; but when there should be 5,000 free males of full age, a territorial legislature might be elected. The first Governor was General Arthur St. Clair, who was President of Congress when elected. He entered upon his duties in 1788 at Marietta. The first territorial legislature met at Cincinnati September 16th, 1799.

In May, 1800, the Territory was divided; the western portion being called the Territory of Indiana, of which W. H. Harrison, afterward President, was made Governor. April 30th, 1802, Congress passed an act to enable the people of the eastern division to form a constitution and State government. The convention met at Chillicothe, November 1st, framed a constitution, and adjourned on the 29th. The constitution was not submitted to the people. There was no formal act admitting Ohio, but February 19, 1803, when Congress recognized the new State, is taken as the date of admission.

LOUISIANA came next into the Union, *April 30th*, 1812. About the time Ohio was admitted, a treaty was made with France, in which that power ceded to the United States the vast territory known then as Louisiana, lying mainly on the west of the Mississippi River. By this purchase the area of the United States was more than doubled. From it the following States have already been formed: Louisiana, Arkansas, Missouri, Kansas, Nebraska, Iowa, Minnesota, Oregon, and a large part of Colorado.

The treaty with France was made April 30th, 1803. A temporary government was provided the same year, and, on March 26th, 1804, Congress divided the region into two territories—the Territory of Orleans and the District of Louisiana. March 2d, 1805, an act was passed authorizing a constitution and State government in the Territory of Orleans, when its free inhabitants should number 60,000. On the 20th of February, 1811, an act was passed to enable the people to form a constitution and State government. This was done January 22d, 1812, and the State was admitted into the Union by act of Congress, April 8th, 1812, to take effect April 30th of that year.

INDIANA, formed from a part of the North-west Territory, was admitted *December 11th*, 1816. The Territory of Indiana, formed May 7th, 1800, was divided January 11th, 1805, and the Territory of Michigan established.

It was again divided, February 3d, 1809, and the Territory of Illinois established. The people having applied for admission into the Union, an enabling act was passed by Congress, April 19th, 1816, and a constitution was formed June 29th. A joint resolution admitting Indiana into the Union was approved December 11th, 1816.

Mississippi, formed from territory ceded by South Carolina, August 9th, 1787, and by Georgia, April 24th, 1802, was admitted *December* 10*th*, 1817. Congress established the territorial government April 7th, 1798. An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government was passed March 1st, 1817. A constitution was formed August 15th, 1817, and the State admitted by act of Congress December 10th, 1817.

Illinois was formed from the North-west Territory, and admitted *December* 3*d*, 1818. The Territory of Illinois was established February 3d, 1809. A memorial of the legislative council to be allowed to form a State government having been presented to the House of Representatives in January, 1818, an enabling act was passed April 18th. The constitution was formed August 26th, and the State was admitted by joint resolution December 3d, 1818.

Alabama, formed from a part of the territory ceded to the United States by South Carolina and Georgia, was admitted *December* 14*th*, 1819. The eastern part of Mississippi Territory was made a separate territory, under the name of Alabama, by act of Congress, March 3d, 1817. Congress, having been memorialized, passed an enabling act March 2d, 1819, and a constitution and State government were formed August 2d, 1819. The State was admitted by joint resolution December 14th, 1819.

Maine was formed from a part of Massachusetts, and became a State *March* 15*th*, 1820. A project was entertained as early as 1786 to erect a separate State from that part of Massachusetts known as the district of Maine, and a convention had once met at Portland to consider it. It was, however, abandoned for the time. On the nineteenth of June, 1819, the legislature of Massachusetts gave their consent to the formation of a new State, if the people of the district desired it, and would consent to certain conditions. This having been done, a convention formed a constitution, October 29th, which was ratified by the people December 6th. A petition was then presented to Congress, and the State admitted by an act passed March 3d, 1820, to take effect March 15th, 1820.

This was the third State formed from a part of another. The others, Vermont and Kentucky, were admitted, with two Representatives each; but Maine was declared to be entitled to seven, Massachusetts having thirteen — Massachusetts had twenty before. The new States which had previously been Territories had each but one till the next census after their admission.

MISSOURI, formed from the Louisiana purchase, was admitted *August 10th*, 1821. As before stated, the act of March 26th, 1804, divided the territory purchased from France, known as the Louisiana purchase, into two Territories. What is now the State of Missouri, was a part of the northern territory which was called the district of Louisiana. For about a year this was under the Governor and Judges of Indiana Territory. On the third of March, 1805, a separate government was provided, and the name changed to that of Territory of Louisiana. On the fourth of June, 1812, the name was changed to that of Missouri Territory. March 2d, 1819, the southern part was separated and erected into a new Territory, called Arkansas Territory. Congress having been memorialized to admit Missouri as a State into the Union, an act was passed March 6th, 1820, authorizing the formation of a constitution and State government. In this enabling act it was provided "That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36° 30′ north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crime, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited."

On the nineteenth of July the people formed a constitution, which was laid before Congress November 16th. March 2d, 1821, a resolution providing for the admission of Missouri into the Union on a certain condition was approved. The condition having been accepted June 26th, 1821, the President issued a proclamation, August 10th, 1821, declaring the admission complete.

Arkansas, formed out of part of the territory ceded by France in 1803, was admitted *June 15th*, 1836.

The Territory of Arkansas was established March 2d, 1819, having been taken from the Territory of Missouri. On the thirtieth of January, 1836, a constitution was formed by a convention, and this was laid before Congress March 1st, with a memorial, asking admission into the Union. An act to admit was approved June 15th, 1836. There was no enabling act passed by Congress in the case of Arkansas. All the States admitted up to this time that had existed as Territories, except Tennessee, were authorized by Congress to form constitutions and State governments. Tennessee claimed the right of admission under the deed of cession from North Carolina to the United States; and Arkansas claimed a like right, by virtue of the treaty of cession by France to the United States of the Province of Louisiana. This treaty provided that "The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." It has been held by legal writers that the action of these Territories in forming constitutions and State governments without authority from Congress was irregular, and that Congress was not required to admit them at the time of application.

MICHIGAN, formed from the North-west Territory, was admitted *January 26th*, 1837.

The Territory of Indiana was divided into two, and that of Michigan established January 11th, 1805. The legislative council, in accordance with a vote of the people, having memorialized Congress for admission into the Union, a bill was reported as an enabling act for that purpose February, 1833; but, on account of the dispute between Ohio and Michigan as to boundaries, it was not passed. On the sixth of September, 1834, the legislative council of the Territory provided for taking the census, and, afterward, for forming a constitution. This constitution having been ratified by the people October 5th, 1835, a State government was organized. A copy of the constitution was then sent to the President with a request for admission into the Union. As the southern boundary which Michigan had given in her constitution was south of the northern boundary of Ohio, she could not of course be received without a change. Strong opposition was made to receiving her at all without an enabling act; but finally an act of admission was passed, June 15th, 1836, admitting her on the condition that a convention of delegates, elected by the people, should assent to the boundaries prescribed by Congress. This was done December 15th, 1836, and the State was admitted by act of Congress, approved January 26th, 1837.

FLORIDA was formed out of the territory ceded by Spain to the United States by treaty of February 22d, 1819. It was admitted into the Union *March 3d*, 1845.

A territorial government was established, by act of Congress, March 30th, 1822. No enabling act was passed in the case of Florida. The convention which framed her constitution was called by the legislature of the Territory. She based her right to admission on the treaty with Spain, as Michigan had based hers on the ordinance of 1787, and Tennessee hers on the deed of cession from North Carolina. She applied for admission in February, 1839, presenting the proceedings of her convention, a constitution, etc., but she was not admitted till March 3d, 1845, as stated above.

The next State admitted was Texas, which came in by a joint resolution of Congress, approved *December 29th*, 1845. Texas, originally a part of Mexico, had become an independent republic. She applied for admission into the Union as a State, and a joint resolution for annexing Texas to the United States was approved March 1st, 1845. This resolution authorized the admission of Texas on certain conditions and guaranties, requiring the action of the people of that republic; or the President of the United States might negotiate with Texas, and it might be admitted by treaty. The former method was adopted; and the required conditions and guaranties having been assented to, a joint resolution for the admission of Texas into the Union on an equal footing with the original States was approved December 29th, 1845. One of the conditions was that new States, not exceeding four in number, might subsequently, by the consent of the State, be formed out of the territory and entitled to admission into the Union. "And such States as may be formed out of that portion of said territory lying south of 36° 30′ N., commonly known as the Missouri Compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri

Compromise line, slavery or involuntary servitude (except for crimes) shall be prohibited." Two Representatives in Congress were allowed.

The case of Texas differs from all others in this, that until it became a State its people were in no respect subject to the government of the United States.

Iowa was the next of the new States admitted. Iowa was admitted *December 28th*, 1846, and was formed from a part of the Louisiana purchase. Confusion has arisen as to the origin of this State, and some writers represent it as having been formed from the original territory of the United States. This confusion is owing to the fact that the Territory of Iowa was formed from that of Wisconsin, and this from that of Michigan; and as Michigan and Wisconsin were both formed from the North-west Territory, the inference was natural that Iowa was also formed from that territory.

Prior to the purchase of Louisiana, in 1803, the United States owned no territory west of the Mississippi. The North-west Territory, organized by the ordinance of 1787, embraced the territory north-west of the Ohio and east of the Mississippi. This territory was divided in 1800, and the western part was called the Territory of Indiana. In 1805 the Territory of Michigan was established, and in 1809 that of Illinois. The Territory of Michigan, at that time, included the territory north of Ohio, Indiana, and Illinois, and east of the Mississippi. But, on the twenty-eighth of June, 1834, an act of Congress attached to the Territory of Michigan all the territory of the United States west of the Mississippi, and north of the State of Missouri. This, of course, included what is now Iowa. On the twentieth of April, 1836, the territorial government of Wisconsin was established. Iowa thus became a part of the Territory of Wisconsin. This Territory was divided, and the new Territory of Iowa was established on the twelfth of June, 1838.

No enabling act was ever passed by Congress for

Iowa. In February, 1841, a bill to that effect was reported to the House of Representatives, but it was not passed. Three years after — February 12th, 1844 — the President communicated to the Senate a memorial from the legislative assembly for admission into the Union. And on December 9th, of the same year a memorial of a convention — October 7th to November 1st — with a copy of a constitution, was received in the Senate.

On the third of March, 1845, an act for the admission of Iowa was approved. This act required the assent of the people of Iowa to be given, after which the President might, by proclamation, announce the admission without further action on the part of Congress. This course, however, was not adopted. On the eighteenth of May, 1846, another constitution was formed by a convention of delegates elected for that purpose, copies of which were presented to the Senate June 10th, and to the House July 6th. On this second constitution, which Congress approved as republican, the act of final admission was passed, December 28th, 1846. Iowa was allowed two Representatives.

WISCONSIN was admitted *May 29th*, 1848. This State was formed from the North-west Territory, making the fifth State, and thus completing the number provided for in the ordinance of 1787. The others, as we have seen, are Ohio, Indiana, Illinois, and Michigan.

The Territory of Wisconsin was established April 20th, 1836, having been formed from that of Michigan. On the twentieth of March, 1845, a resolution of the legislative council of Wisconsin, asking that provision be made for taking a census and holding a convention to form a State constitution, was presented in the Senate. An enabling act was approved August 6th, 1846. A State constitution was formed December 16th, 1846, and in January it was presented in Congress. On the third of March, 1847, an act for the admission of Wisconsin was passed; the admission to be on the condition of the assent of the qualified voters to the constitution. The President was to announce the assent by proclamation, and then the admission was to be complete.

But, as in the case of Iowa, this plan was not carried out. The constitution was rejected by the people in 1847, and another convention was held and another constitution was adopted February 1st, 1848. This was ratified by the people. The preamble of the act of admission, approved May 29th, 1848, recognized this constitution as republican, making it thus the basis of admission. The boundaries of the State were the same as prescribed in the enabling act of August 6th, 1846. This act gave the State two Representatives till the next census, but the act of admission provided for three from and after March 4th, 1849.

CALIFORNIA was admitted into the Union *September 9th*, 1850. It was formed from a part of the territory ceded to the United States by Mexico in the treaty made at Guadalupe Hidalgo, February 2d, 1848. By this treaty the United States obtained, besides California, what is now the State of Nevada, and the Territories of Utah, New Mexico, and Arizona, and portions of Colorado and Wyoming. California never had a territorial government. Most of the New States existed previously as Territories; four — Maine, Vermont, Kentucky, and West Virginia —were formed from parts of other States; one — Texas —was an independent republic, and was annexed to the United States by joint resolution of Congress. California differed from all the rest in her previous condition. Efforts were made in Congress to pass acts to establish a territorial government, but they all failed.

A convention was called by General Riley, the military governor, which, on the thirteenth of October, 1849, formed a constitution. This was ratified by the people on the thirteenth of November, and the State was admitted September 9th, 1850. Two Representatives were allowed her.

Minnesota was admitted *May* 11*th*, 1858. This State, lying on both sides of the Mississippi River, was formed in part from the Louisiana purchase and in part from the North-west Territory. A territorial government was established March 3d, 1849. On the twenty-sixth of February, 1857, Congress authorized the people of the Territory to form a constitution and State government, preparatory to their admission into the Union. A convention was held accordingly, and a constitution formed August 29th, which was ratified by the people October 13th.

"The two political parties in the convention, Republicans and Democrats, disagreeing as to the organization of the body, formed separate conventions, which ran parallel courses, each claiming to be the only legitimate convention. Two constitutions were reported, and it seemed that the people were to be embarrassed by the necessity of choosing between them, when, towards the close of their respective sessions, a conference was had between the two bodies, and a single constitution reported to and adopted by them both. It seems clear that this mode of organizing has decided advantages. A constitution acceptable to all political parties in a State must be free from partisan legislation; must contain, as it ought, only measures whose policy or expediency had been thoroughly settled in the public mind." (Jameson, p. 263.)

This constitution was approved by Congress, and the State was admitted May 11th, 1858, with two Representatives.

Oregon was admitted *February* 14*th*, 1859. Some deem it a part of the Louisiana purchase, but that province is believed to have embraced only the Mississippi valley. Others regard the Oregon country as having become ours by the discovery of the Columbia

River. There was a conflict of claims in regard to it; but in 1819 Spain relinquished to us her claim to all north of the 42d parallel, and in 1846 Great Britain did the same as to all south of the 49th parallel. There is thus a fourfold title: the right by discovery, and by cessions from France, Spain, and Great Britain. An act of Congress passed August 14, 1848, established a territorial government, over "that part of the territory of the United States which lies west of the summit of the Rocky Mountains, north of the 42d degree of north latitude." The northern part was erected into the Territory of Washington March 2d, 1853.

A convention was called by the legislature of the Territory to meet in August, 1857, and in September a constitution was formed, which was submitted to the people for ratification, and approved. No enabling act had been passed by Congress in her case. She was declared entitled to one Representative.

Kansas was admitted *January 29th*, 1861. It was formed from a part of the Louisiana purchase. It was organized as a Territory May 30th, 1854, by the act known as the Kansas-Nebraska Act — the two Territories being established by the same act. This act caused great excitement throughout the country. The "Missouri Compromise" of 1820 provided that there should be no more slave States north of the parallel of 36° 30′. This had been re-affirmed in the joint resolution of March 1st, 1845, for annexing Texas, and again in the act defining the boundaries of Texas and establishing the Territory of New Mexico, passed September 9th, 1850.

Kansas and Nebraska were both north of the parallel of 36° 30′; but the act by which they were organized as Territories provided that when they should be admitted as States into the Union they should be received, with or without slavery, as their constitutions might prescribe at the time of their admission. The same act declared the Missouri Compromise inoperative and void.

On the twenty-third of October, 1855, a convention at Topeka formed a constitution. This was a spontaneous movement on the part of those known as the Free State party, not having been called either by the Governor or the territorial legislature. The constitution was submitted to the people and ratified by a large majority of those who voted—the other party not voting. Under this constitution an election of State officers was held January 15th, 1856, and a State government organized. President Pierce issued a proclamation against this government in February, and on the fourth of July the legislature was forcibly dispersed by an officer of the United States army.

The territorial legislature also provided for a convention, which assembled at Lecompton, September 5th, 1857, and framed the constitution known as the Lecompton constitution. This established slavery. Application for admission into the Union was then made, but the bill was not passed as introduced. A bill for conditional admission was passed May 4th, 1858, which required that the constitution, with certain propositions from Congress, should be submitted to the people. This was done on the third of August of that year, when the constitution was rejected by ten thousand majority.

Another convention was held at Wyandotte, and a constitution was formed in July, 1859. This was submitted to the people October 4th, and ratified by a majority of four thousand. Under this constitution Kansas was admitted into the Union, January 29th, 1861. She was declared to be entitled to one Representative.

WEST VIRGINIA was admitted into the Union *June 20th*, 1863. It was formed from a part of Virginia. The circumstances of the formation of this new State were peculiar. On the seventeenth of April, 1861, a body of men, styling themselves the convention of Virginia, passed an ordinance of secession from the United States. Most of the State officers joined the rebels, carrying with them the public funds and the archives of the State. The territory was still a part of the national domain, though most of it was in possession of the rebels. The loyal people, whom alone the Constitution or government of the United States could recognize as the people of Virginia, were without a State government. In this exigency they took the reconstruction of the State government into their own hands. They called a convention, which met at Wheeling, June 13th, 1861, and passed an ordinance providing for the appointment of a Governor and other State officers, and requiring the general assembly to meet July 1st. This convention also passed an ordinance to provide for the formation of a new State out of a portion of the territory of Virginia. The people within the prescribed boundaries were to vote on the question of a new State, and polls were also opened for the election of delegates to a convention to form a constitution. The vote having been largely in favor of a new State, the convention met at Wheeling, November 26th, and framed a constitution which was adopted by the people.

May 13th, 1862, the legislature of Virginia gave consent to the formation of a new State. December 31st, Congress passed an act admitting West Virginia, provided the people should ratify a proposed change in the constitution. That being done, the President was to issue a proclamation, and the admission was to be complete sixty days after the proclamation. The convention adopted the change February 17th, 1863. The vote of the people on the ratification of the amended constitution was taken March 26th, 1863, being largely in favor. On the twentieth of April, the proclamation was issued, and sixty days thereafter—*June 20th*, 1863—West Virginia became one of the United States. She was allowed three Representatives.

In this case there was the consent of three parties—the State from which the new State was formed, Congress, and the people of the district set off. If it were doubted whether the body that met at Wheeling in July, 1861, was the general assembly of Virginia, the action of the United States Government in all its departments must be deemed conclusive.

Nevada was admitted into the Union *October* 31*st*, 1864, by the proclamation of the President. It was formed from a part of the territory obtained from Mexico by the treaty of February 2d, 1848. It was organized as a Territory March 2d, 1861. In 1863 a constitution was formed and submitted to the people, but rejected. On the twenty-first of March, 1864, an enabling act was passed by Congress, which provided for the holding of a convention on the first Monday of July. If a constitution should be framed, it was to be submitted to the people on the second Tuesday of October. The President of the United States, on being certified that such constitution had been ratified by the people, was to issue his proclamation, admitting it without further act of Congress. This was done October 31st, 1864. It was to have one Representative.

Nebraska was admitted *March* 1*st*, 1867. This is a part of the Louisiana purchase. It was organized as a Territory May 30th, 1854. An enabling act was passed for it April 19th, 1864. In January, 1867, Congress passed an act approving its constitution, and admitting it on condition that there should be no denial of the elective franchise or of other rights because of race or color. The act, though vetoed by President Johnson, became a law. The conditions were fulfilled, and it became a State by proclamation of the President March 1st, 1867. It had one Representative.

Colorado became a State *August* 1*st*, 1876. A part of it came from Louisiana and a part from the territory acquired from Mexico. It was organized as a Territory

February 28th, 1861. A bill to admit it as a State was passed in January, 1867, but was vetoed by the President. An enabling act was passed March 3d, 1875, and a Constitution was formed. This was ratified by the people in July, 1876, and the President was duly certified thereof. It then, by the terms of the enabling act, became his duty to declare the State admitted into the Union "without any farther action whatever on the part of Congress." It came in with one Representative.

The thirty-eight States may be arranged, with regard to their *origin*, as follows: Original States, *thirteen*—New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia. States formed from territory originally belonging to the States, *twelve*—Vermont, Maine, Kentucky, Tennessee, Mississippi, Alabama, Ohio, Indiana, Illinois, Michigan, Wisconsin, West Virginia. States formed from territory purchased by the United States, *eight*—Florida, Louisiana, Arkansas, Missouri, Kansas, Nebraska, Iowa, Minnesota. States from conquered territory, *two*—California, Nevada; from discovery and cession, *one*—Oregon; of mixed origin, *one*—Colorado; existing before as an independent republic, *one*—Texas.

Arranged according to the *mode of admission*, the new States would be grouped as follows: *Four* were formed from other States—Vermont, Maine, Kentucky, West Virginia. *One* had no previous territorial government—California. *One* was annexed—Texas. The remaining *nineteen* had been organized as Territories prior to their admission as States.

There are eight organized Territories. Washington and Idaho are a part of the Oregon territory. Dakota belonged to the province of Louisiana. Arizona, New Mexico, and Utah are part of the territory acquired from Mexico in 1848 and 1853. Montana is chiefly from Louisiana, that part west of the Rocky Mountains being originally a part of Oregon. Wyoming has its larger part from Louisiana, with smaller portions from Oregon and Mexico.

The Executive power of a Territory is vested in a Governor; the Legislative, in the Governor and Legislative Assembly; and the Judicial, in a Supreme Court, District Courts, Probate Courts, and Justices of the Peace. The Governor, Secretary, Chief Justice and two Associate Justices, Attorney, and Marshal, are appointed by the President, with the advice and consent of the Senate, for four years, unless sooner removed by the President, with the consent of the Senate. The Legislative Assembly consists of a Council and House of Representatives. These are elected by the people — the former for two years, the latter for one year. The Governor has the power to veto bills, modified as in the case of the President.

The officers of the Territories are paid from the treasury of the United States. The Governor receives $2600 a year; the Secretary, $1800; the Judges of the Supreme Court, who also hold the District Courts, $2600 each; the Attorney and Marshal are paid by fees; the members of the Assembly, $6.00 a day for forty days, and $3.00 for each twenty miles of travel; the President of the Council and the Speaker of the House, $10.00 a day.

In addition to the States and Territories mentioned above, the United States includes the unorganized Territory of Alaska, purchased from Russia in 1867, containing 577,390 square miles; and the Indian country lying west of Arkansas, which, with some ten thousand square miles of unorganized territory adjoining it on the west, contains 68,991 square miles.

According to the Ninth Census Report, the number of square miles in the whole area of the United States is 3,603,884. Of this the thirty-eight States contain 2,088,967 and the Territories (including Alaska and the Indian country), 1,513,917.

CHAPTER VII.

PRACTICAL OPERATION OF THE CONSTITUTION.

In this chapter will be given some account of the workings of the government under the Constitution. The more important offices in the different departments will be mentioned, with the duties, compensation, mode of appointment, etc.

THE LEGISLATIVE DEPARTMENT.

The Constitution provides, as has been seen, for a Congress, composed of a Senate and House of Representatives. The Senators are elected by the State legislatures, and hold their office for six years; the Representatives are elected by the people of their several districts, for the term of two years. The members of the two Houses receive the same compensation, $5000 a year, with mileage at the rate of "twenty cents a mile, to be estimated by the nearest route usually traveled in going to and returning from each regular session."

THE SENATE.

The Vice-President of the United States is the President of the Senate. He gives the casting vote when the Senate is equally divided, and signs all bills and resolutions that are passed by the Senate. His salary was originally $5000. In 1853 it was raised to $8000, in 1873 to $10,000, and in 1874 reduced to $8000.

The following is the list of Vice-Presidents:

John Adams,	1789 to 1797.
Thomas Jefferson,	1797 to 1801.

Aaron Burr,	1801 to 1805.
George Clinton,	1805 to 1812.[1]
Elbridge Gerry,	1813 to 1817.
Daniel D. Tompkins,	1817 to 1825.
John C. Calhoun,	1825 to 1832.[2]
Martin Van Buren,	1833 to 1837.
Richard M. Johnson,	1837 to 1841.
John Tyler,	1841 to 1841.[3]
George M. Dallas,	1845 to 1849.
Millard Fillmore,	1849 to 1850.[4]
William R. King,	1853 to 1853.[5]
John C. Breckenridge,	1857 to 1861.
Hannibal Hamlin,	1861 to 1865.
Andrew Johnson,	1865 to 1865.[6]
Schuyler Colfax,	1869 to 1873.
Henry Wilson,	1873 to 1875.[7]
William A. Wheeler,	1877 to ——.

There is no provision in the Constitution or by statute for filling a vacancy in the office of Vice-President. From March 4th, 1853, to March 4th, 1857, there was no Vice-President, Mr. W. R. King having died before taking the oath of office. When the Vice-President becomes President, the Senate choose a President *pro tempore*, but this does not constitute him Vice-President.

The *Secretary of the Senate* receives $4896; the *Sergeant-at-arms*, $4320; the *Chaplain*, $900.

THE HOUSE OF REPRESENTATIVES.

The presiding officer, called the Speaker, is chosen by the House. The term had its origin when legislative bodies were addressed by the chief executive, and their presiding officer was expected to respond. As he spoke for the body he was called the Speaker. He signs all bills and joint resolutions passed by the House, and, under the rules of the House, appoints its committees. If both the President and Vice-President are incapacitated to perform the duties of President, and there is no President *pro tempore* of the Senate, the Speaker of the House acts as President. He is required to vote in case of ballot, and he may vote on other occasions. His salary is $8,000. The Speakers have been:

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[1] Died April 20th, 1812.

[2] Resigned December 28th, 1832.

[3] Became President April 6th, 1841, on the death of Pres. Harrison.

[4] Became President July 9th, 1850, on the death of President Taylor.

[5] Never took the oath of office. Died April 18th, 1853.

[6] Became President April 15th, 1865, on the death of Pres. Lincoln.

[7] Died November 23d, 1875.

1st	Congress,	F. A. Muhlenberg,	Penn.
2d	“	Jonathan Trumbull,	Conn.
3d	“	F. A. Muhlenberg,	Penn.
4th	“	Jonathan Dayton,	N. J.
5th	“	Jonathan Dayton,	“
6th	“	Theodore Sedgwick,	Mass.
7th	“	Nathaniel Macon,	N. C.
8th	“	Nathaniel Macon,	“
9th	“	Nathaniel Macon,	“
10th	“	Joseph B. Varnum,	Mass.
11th	“	Joseph B. Varnum,	“
12th	“	Henry Clay,	Ky.
13th	“	Henry Clay,	“
		Langdon Cheves,	S. C.
14th	“	Henry Clay,	Ky.
15th	“	Henry Clay,	“
16th	“	Henry Clay,	“
		John W. Taylor,	N. Y.
17th	“	P. P. Barbour,	Va.
18th	“	Henry Clay,	Ky.
19th	“	John W. Taylor,	N. Y.
20th	“	Andrew Stevenson,	Va.
21st	“	Andrew Stevenson,	“
22d	“	Andrew Stevenson,	“
23d	“	Andrew Stevenson,	“
		John Bell,	Tenn.

24th	Congress,	James K. Polk,	Tenn.
25th	"	James K. Polk,	"
26th	"	R. M. T. Hunter,	Va.
27th	"	John White,	Ky.
28th	"	John W. Jones,	Va.
29th	"	John W. Davis,	Ind.
30th	"	Robert C. Winthrop,	Mass.
31st	"	Howell Cobb,	Ga.
32d	"	Linn Boyd,	Ky.
33d	"	Linn Boyd,	"
34th	"	Nathaniel P. Banks,	Mass.
35th	"	James L. Orr,	S. C.
36th	"	Wm. Pennington,	N. J.
37th	"	Galusha A. Grow,	Penn.
38th	"	Schuyler Colfax,	Ind.
39th	"	Schuyler Colfax,	"
40th	"	Schuyler Colfax,	"
41st	"	James G. Blaine,	Maine.
42d	"	James G. Blaine,	"
43d	"	James G. Blaine,	"
44th	"	Michael C. Kerr, Samuel J. Randall,	Ind. Penn.
45th	"	Samuel J. Randall,	"

The *Clerk* receives $4500, the *Sergeant-at-arms* $4000, the *Doorkeeper* $2500, the *Chaplain* $900.

PRACTICAL LEGISLATION.

In each House there are Standing Committees, to whom are referred the various matters of business for examination and report. It has been usual for the Speaker to appoint the House Committees, while in the Senate they are chosen by ballot.

In the Forty-fourth Congress the Senate had twenty-eight Standing Committees, besides a number of Select Committees and Joint Committees. The House had forty-three Standing Committees. The principal Committees are those on Ways and Means, Appropriations, Judiciary, Foreign Relations, Elections, Banking and Currency, Commerce, Post-office, Claims, Pacific Railroad, Indian Affairs, Public Lands, District of Columbia, Public Expenditures, Naval Affairs, Territories, Military Affairs, Mines and Mining, Freedmen's Affairs, Education and Labor, Revision of the Laws, Patents, Coinage etc., Manufactures, Agriculture, Pensions, Public Buildings.

In the Senate, a Standing Committee usually consists of nine members, and in the House, of eleven. As "all bills for raising Revenue" must originate in the House, the Senate has no Committee of Ways and Means. This Committee is regarded as the most important, and the place of Chairman is held to be next to that of Speaker in honor.[1]

The House often resolves itself into a *Committee of the Whole*, when the Speaker leaves the chair and a chairman is appointed. This gives opportunity for free discussion without the restraint of the strict rules of the House. When this committee closes its session, in technical terms *rises*, the Speaker resumes the chair, and the chairman of the committee reports its proceedings.

A bill introduced into either House is supposed to be *read* three times, and at each reading to be formally acted upon by the House. But usually, if no objection is made, the bill is read twice by its title, referred to the appropriate committee, and ordered to be printed. When a bill has been reported from the committee, it is ordered to be *engrossed* and read a third time, when the vote is taken upon its passage. After having passed both Houses it is *enrolled* on parchment, and carefully examined by the committee on enrolled bills, who make their report, when the bill is signed by the

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[1] There are three Joint Committees: on Public Printing, on Enrolled Bills, and on the Library. These consist of three members from each House.

Speaker of the House and the President of the Senate, and sent to the President of the United States for his signature.

When a bill has been passed over the veto of the President by the requisite majority in each House, certificates to that effect, signed by the Clerk of the House of Representatives and the Secretary of the Senate, are appended to the bill, in addition to the official signatures of the Speaker of the House and the President of the Senate.

If a bill has been presented to the President for his approval, and not returned by him within the time prescribed by the Constitution, a note to that effect is appended by the Department of State.

THE EXECUTIVE DEPARTMENT.

The executive power is vested in a single officer, styled the President of the United States. We have seen that he must be thirty-five years of age, a native-born citizen, and a resident for fourteen years in the United States. He is elected for a period of four years by electors chosen by the people in the several States. His term commences on the fourth of March. The salary, which can not be increased or diminished during the period for which he shall have been elected, was $25,000 a year till the fourth of March, 1873, when Congress raised it to $50,000.

The President may be re-elected; and of the fifteen who have been elected to the office, seven have been elected for a second term.

The following is a list of the Presidents:

George Washington, of Virginia, was unanimously elected the first President. Though the term properly began on the fourth of March, he was not sworn into office until the thirtieth of April. He was re-elected unanimously, and thus held the office till March 4th, 1797.

John Adams, of Massachusetts, was elected by a small majority over Thomas Jefferson; his term expired March 4th, 1801.

Thomas Jefferson, of Virginia, was elected by the House of Representatives. John Adams was the opposing candidate before the people, but in the House the friends of Mr. Adams voted for Aaron Burr. Mr. Jefferson was elected on the thirty-sixth ballot, and Mr. Burr became Vice-President. Mr. Jefferson was elected for a second term, his competitor being Charles C. Pinckney, of South Carolina. Mr. Jefferson was President from 1801–1809.

James Madison, of Virginia, was elected over Mr. C. C. Pinckney in 1808, and again, in 1812, over De Witt Clinton, of New York; his term ending March 4th, 1817.

James Monroe, also of Virginia, was elected, in 1816, over Rufus King, of New York, and re-elected, in 1820, almost unanimously.

John Quincy Adams, of Massachusetts, was elected by the House of Representatives in February, 1825. The electoral votes were given to Andrew Jackson, J. Q. Adams, W. H. Crawford, and Henry Clay. The House, from the three highest candidates, chose Mr. Adams, who received the votes of thirteen States, seven voting for Mr. Jackson, and four for Mr. Crawford. Mr. Adams served the full term from March, 1825, to March, 1829.

Andrew Jackson, of Tennessee, was elected, in 1828, over Mr. Adams, and again, in 1832, over Henry Clay, of Kentucky; holding the office for eight years, to March 4th, 1837.

Martin Van Buren, of New York, was the successful candidate, in 1836, over Wm. H. Harrison, of Ohio. His term ended March 4th, 1841.

William H. Harrison was elected, in 1840, over Mr. Van Buren. He entered upon his duties March 4th, 1841, and died April 4th of the same year. John Tyler, of Virginia, the Vice-President, thus became President.

He took the oath of office April 6th, and served the remainder of the term, to March 4th, 1845.

James K. Polk, of Tennessee, was elected, in 1844, over Henry Clay, and served four years, to March 4th, 1849.

Zachary Taylor, of Louisiana, was elected over Lewis Cass, of Michigan, in 1848. He entered upon his duties March 4th, 1849, and died July 9th, 1850. Millard Fillmore, of New York, the Vice-President, took the oath of office July 10th, and served till March 4th, 1853.

Franklin Pierce, of New Hampshire, was elected, in 1852, over Winfield Scott, and held the office one term, from March, 1853, to March, 1857.

James Buchanan, of Pennsylvania, was elected, in 1856, over John C. Fremont and Millard Fillmore. He served one term, to March, 1861.

Abraham Lincoln, of Illinois, was elected, in 1860, over John Bell, John C. Breckenridge, and Stephen A. Douglas. In 1864 he was re-elected over George B. McClellan, and died April 14th, 1865. Andrew Johnson, of Tennessee, the Vice-President, was sworn in as President April 15th, and served the remainder cf the term.

Ulysses S. Grant, of Illinois, was elected, in 1868, over Horatio Seymour, of New York, and re-elected in 1872. His competitor in 1872, Horace Greeley, of New York, died November 29th. President Grant's second term expired March 4th, 1877.

Rutherford B. Hayes, of Ohio, was elected, in 1876, over Samuel J. Tilden. The vote stood 185 and 184.

THE DEPARTMENTS.

The Constitution contemplates "heads of departments." The departments are not defined in the Constitution, but have been established by law. There are now seven of these, viz.: The Departments of State, of the Treasury, of War, of the Navy, of the Post-office, of the Interior, of Justice. The heads of the departments are known collectively as "The Cabinet," and with two exceptions are called Secretaries. The head of the Post-office Department is called the Postmaster-General, and the head of the Department of Justice is the Attorney-General.

Some of the departments are subdivided into subordinate departments, known as *Bureaus*. Thus, in the Department of the Interior, the Patent Office is a Bureau, and the Pension Office, and the Census Office. In the War Department there is the Bureau of Military Justice, the Bureau of Engineers, etc.

The salaries of the heads of departments were not equal at first. The Secretary of State and the Secretary of the Treasury had $3500 each; the Secretary of War, $3000; the Postmaster-General, $2000; and the Attorney-General, $1500.

In 1819 the salary of each of the Secretaries of the Departments of State, the Treasury, War, and the Navy, was made $6000; that of the Postmaster-General being $4000, and that of the Attorney-General $3500. In 1853 all were made equal, $8000 each; in 1873, $10,000; in 1874, $8000 again. All the heads of departments are appointed by the President, with the advice and consent of the Senate.

THE DEPARTMENT OF STATE.

Prior to the adoption of the Constitution Congress had established the Department of Foreign Affairs, to be under the direction of an officer styled "Secretary for the Department of Foreign Affairs." In July, 1789, an Executive Department was established under the same designation, which in September was changed to that of the Department of State.

The office of Secretary of State is usually regarded as next in importance to that of the President. The duties of the office are not very clearly defined by law, but are largely such as come from the instructions of the

President. The Secretary is to "perform and execute such duties as shall from time to time be enjoined on or intrusted to him by the President, agreeably to the Constitution, relative to correspondences, commissions, or instructions to or with public ministers or consuls from the United States."

He preserves the original of all treaties, public documents, laws, and correspondence with foreign powers. He keeps the seal of the United States, and affixes it to all commissions which are signed by the President. He authenticates all proclamations of the President. He furnishes copies of records and papers in his office, authenticated under the seal of the department.

He has charge of foreign relations, and conducts the correspondence with foreign ministers, and with our ministers and consuls. He is the organ of communication of the President with the governors and other officers of Territories.

He issues passports to citizens wishing to visit foreign countries. He issues warrants for the extradition of criminals who are to be delivered up to foreign governments in accordance with treaty stipulations. He presents to the President all foreign ministers.

The salary of the Secretary of State is now $8,000 a year. In 1789, it was established at $3500. In 1799, it was made $5000; in 1819, $6000; in 1853, $8000; in 1873, $10,000; and in 1874, $8000.

The following persons have held the office of Secretary of State:

Thomas Jefferson,	Va.,	appointed	Sept. 26, 1789.
Edmund Randolph,	Va.,	"	Jan. 2, 1794.
Timothy Pickering,	Mass.,	"	Dec. 10, 1795.
John Marshall,	Va.,	"	May 13, 1800.
James Madison,	Va.,	"	March 5, 1801.
Robert Smith,	Md.,	"	March 6, 1809.
James Monroe,	Va.,	"	April 2, 1811.

John Q. Adams,	Mass.,	appointed	March 5, 1817.
Henry Clay,	Ky.,	“	March 8, 1825.
Martin Van Buren,	N. Y.,	“	March 6, 1829.
Edward Livingston,	La.,	“	May 24, 1831.
Louis McLane,	Del.,	“	May 29, 1833.
John Forsyth,	Ga.,	“	June 27, 1834.
Daniel Webster,	Mass.,	“	March 5, 1841.
Hugh S. Legaré, *ad. int.*	S. C.,	“	May 9, 1843.
Abel P. Upshur,	Va.,	“	July 24, 1843.
John C. Calhoun,	S. C.	“	March 6, 1844.
James Buchanan,	Penn.,	“	March 5, 1845.
John M. Clayton,	Del.,	“	March 7, 1849.
Daniel Webster,	Mass.,	“	July 20, 1850.
Edward Everett,	Mass.,	“	Nov. 6, 1852.
William L. Marcy,	N. Y.,	“	March 7, 1853.
Lewis Cass,	Mich.,	“	March 6, 1857.
Jeremiah S. Black,	Penn.,	“	Dec. 17, 1860.
William H. Seward,	N. Y.,	“	March 5, 1861.
Elihu B. Washburne,	Ill.,	“	March 5, 1869.
Hamilton Fish,	N. Y.,	“	March 16, 1869.
William M. Evarts,	N. Y.,	“	March 10, 1877.

It will be seen that six of these afterwards were elected to the presidency, viz.: Jefferson, Madison, Monroe, J. Q. Adams, Van Buren, and Buchanan. Three, Madison, Monroe, and Adams, passed from the office of Secretary of State to that of President.

In 1853 an Assistant Secretary was authorized; in 1866, a second; and in 1874, a third. Each receives a salary of $3500.

AMBASSADORS AND OTHER PUBLIC MINISTERS.

All persons who are sent abroad to represent our government are connected with the Department of State. These representatives are of different grades, though it is not easy to draw the lines that distinguish them. The Constitution speaks of “Ambassadors,” and the act of August 18th, 1856, states the compensation which ministers of this class shall receive. Mr. Gillet says: "The federal government has never sent an ambassador to any foreign government, and, it is said, has never received a foreign representative who was strictly such. France, Russia, Great Britain, Austria, and Spain are the only modern governments who have sent ambassadors to other governments. Prussia has never done so."[1]

The act of 1856, referred to above, provides for the compensation of the different classes of ministers; Ambassadors and Envoys Extraordinary and Ministers Plenipotentiary are entitled to receive the full compensation named; Ministers Resident and Commissioners, seventy-five per centum; Chargés d'Affaires, fifty per centum; and Secretaries of Legation, fifteen per centum. Judging from the salaries paid, the Envoy Extraordinary and Minister Plenipotentiary is of equal rank with the Ambassador; and this is the formal designation given by our government to the highest class of foreign ministers.

Envoys Extraordinary and Ministers Plenipotentiary are sent to thirteen governments. Four of these receive $17,500 a year, viz: those to France, the German Empire, Russia, and Great Britain; seven receive $12,000, viz: those to Austria, Brazil, China, Italy, Mexico, Japan, and Spain; two $10,000, viz: those to Chili and Peru.[2] Hon. John Welsh is the present Minister to Great Britain, Hon. Edward F. Noyes to France, and Hon. Bayard Taylor to the German Empire.

Ministers Resident are sent to the Argentine Republic, Belgium, Hawaiian Islands, Netherlands, Sweden and Norway, Turkey, and Venezuela. These receive each

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[1] The Federal Government, p. 172,

[2] Prior to 1856, a Minister Plenipotentiary received $9000 per annum salary, and $9000 *outfit.*

$7500 a year. One Minister Resident, with a salary of $10,000, is accredited to Guatemala, Costa Rica, Honduras, Salvador, and Nicaragua. A Minister Resident and Consul-General to Hayti receives $7500, and one to Liberia, $4000.

Ministers Resident are inferior in rank to Envoys Extraordinary and Ministers Plenipotentiary. Their duties, however, are the same. The difference is principally in the relative importance of the governments to which they are sent.

The term *Commissioner* has sometimes been applied by our government to diplomatic representatives. Commissioners were formerly sent to China, Mexico, and other places. At present no regular diplomatic officer is styled a Commissioner. The title is often applied to those sent on special service, as in the case of the Commissioners who helped to frame the Treaty of Washington.

Chargés d'Affaires are sent to Denmark, Greece, Switzerland, Portugal, and Paraguay and Uruguay, with salaries of $5000 each. The Chargé d'Affaires ranks below the Minister Resident and Commissioner. The term would imply a kind of minister *ad interim*, rather than a permanent officer. Formerly, however, a majority of our diplomatic representatives were styled Chargés d'Affaires. Thus in 1849 there were eight Ministers Plenipotentiary, one Minister Resident (to Turkey), and sixteen Chargés d'Affaires. At present, as we have seen, our government is represented in other countries by thirteen Ministers Plenipotentiary, ten Ministers Resident, and five Chargés d'Affaires.

The *Secretary of Legation* is the secretary, or clerk, to a foreign embassy. A Secretary of Legation is usually sent to every government to which is accredited a Minister Plenipotentiary. At Paris, London, and Berlin there are Assistant Secretaries. The Ministers to Chili and Japan have no Secretaries, while there is a Secretary at Constantinople, although the United States are represented there by a Minister Resident. Sometimes through the death or removal of the Minister, his duties are devolved on the Secretary of Legation; in which case he receives the salary of a Chargé.

Consuls are commercial rather than diplomatic agents. Their principal duty is to watch over the interests of our commerce in the ports of the different countries, and to protect the rights of seamen. In execution of this general duty, they hold the ship's papers of all American vessels while in port; provide for the return home of those who are destitute; they hear complaints of seamen; they reclaim deserters; they appoint examiners for vessels reported unseaworthy; they cause mutinous sailors to be arrested and sent home for trial; they require three months extra wages to be paid to seamen when discharged through the sale of the vessel, one-third to be retained as a fund with which to send American sailors home, or provide for those who are destitute; they take possession of the personal property of American citizens dying abroad; they take measures for the saving of stranded vessels and their cargoes, etc., etc.

In 1871 the United States had thirteen Consuls-General — two of whom were also Ministers Resident, those to Hayti and Liberia — two hundred and sixty-six Consuls, and thirty-five Commercial Agents. Until the year 1855 these officers were compensated by fees. In March of that year the diplomatic and consular systems were remodeled, and salaries are now paid in all the more important ports. Fees are collected, but they are accounted for to the government. Consuls receive from $1000 to $6000 per annum. Most Consuls who are paid by fees, or who receive small salaries, are at liberty to transact business for themselves; others are prohibited from so doing.

The title *Consul-General* was not used till 1855. Such officers are now sent to British India, Canada, China, Cuba, Egypt, France, the German Empire, Great Britain, Hayti, Italy, Liberia, Mexico, and Turkey. Their salaries range from $2000 to $6000.

THE TREASURY DEPARTMENT.

This department was established in 1789. Its head is the Secretary of the Treasury. The original act provided also for a Comptroller, an Auditor, a Treasurer, a Register, and an Assistant to the Secretary.

It is the duty of the Secretary to digest and prepare plans for the improvement and management of the revenue, and for the support of public credit; to superintend the collection of the revenue; to decide on the forms of keeping accounts and making returns; to grant, under certain limitations, all warrants for money to be issued from the treasury in pursuance of appropriations by law; and, generally, to perform all such services relative to the finances as shall be required.

The power and influence of this department have increased with the growth of the country in wealth and population, and it has been still more enhanced by the great increase of the national debt, the establishment of the system of internal revenue, the issue of a legal tender paper currency, and the establishment of the national banking system.

The salary of the Secretary of the Treasury has been the same as that of the Secretary of State: in 1789, $3500; in 1799, $5000; in 1819, $6000; in 1853, $8000; in 1873. $10,000; in 1874, $8000.

The following is a list of Secretaries, with the date of their appointment:

Alexander Hamilton,	N. Y.,	appointed	Sept. 11, 1789.
Oliver Wolcott,	Conn.,	"	Feb. 3, 1795.
Samuel Dexter,	Mass.,	"	Dec. 31, 1800.
Albert Gallatin,	Penn.,	"	Jan. 26, 1802.
George W. Campbell,	Tenn.,	"	Feb. 9, 1814.
Alexander J. Dallas,	Penn.,	"	Oct. 6, 1814.
William H. Crawford,	Ga.,	"	March 5, 1817.

Richard Rush,	Penn.,	appointed	March 7, 1825.
Samuel D. Ingham,	Penn.,	“	March 6, 1829.
Louis McLane,	Del.,	“	Aug. 8, 1831.
William J. Duane,	Penn.,	“	May 29, 1833.
Roger B. Taney,[1]	Md.,	“	Sept. 23, 1833.
Levi Woodbury,	N. H.,	“	June 27, 1834.
Thomas Ewing,	Ohio,	“	March 5, 1841.
Walter Forward,	Penn.,	“	Sept. 13, 1841.
John C. Spencer,	N. Y.,	“	March 3, 1843.
George M. Bibb,	Ky.,	“	June 15, 1844.
Robert J. Walker,	Miss.,	“	March 5, 1845.
William M. Meredith,	Penn.,	“	March 7, 1849.
Thomas Corwin,	Ohio,	“	July 20, 1850.
James Guthrie,	Ky.,	“	March 7, 1853.
Howell Cobb,	Ga.,	“	March 6, 1857.
Phillip F. Thomas,	Md.,	“	Dec. 12, 1860.
John A. Dix,	N. Y.,	“	Jan. 11, 1861.
Salmon P. Chase,	Ohio,	“	March 5, 1861.
William P. Fessenden,	Maine,	“	July 1, 1864.
Hugh McCulloch,	Ind.,	“	March 7, 1865.
Alexander T. Stewart,[2]	N. Y.,	“	March 5, 1869.
George S. Boutwell,	Mass.,	“	March 12, 1869.
William A. Richardson,	Mass.,	“	March 17, 1873.
Benjamin H. Bristow,	Ky.,	“	June 2, 1874.
Lot M. Morrill,	Maine,	“	July 7, 1876.
John Sherman,	Ohio,	“	March 8, 1877.

There are two Assistant Secretaries. The salary is $4500.

BUREAUS IN THE TREASURY DEPARTMENT.

The work in this department is performed by various officers, distributed in bureaus as follows: office of First Comptroller, Second Comptroller, First Auditor, Second Auditor, Third Auditor, Fourth Auditor, Fifth Auditor, Sixth Auditor, Treasurer, Register, Commissioner of Customs, Comptroller of the Currency, Commissioner of Internal Revenue, Bureau of Statistics, the Mint, Bureau of Engraving and Printing.

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[1] Rejected by the Senate.

[2] Resigned, being ineligible as an importer.

It is the duty of the *Comptrollers* to examine all accounts settled by the Auditors, and to countersign warrants drawn upon the Treasurer by the heads of the different departments. Having the final adjudication of accounts involving vast sums of money, the Comptrollers hold a most responsible office, requiring great capacity as well as the strictest integrity.

The office of Comptroller was created in 1789, and in 1817 a Second Comptroller was provided for. The *First Comptroller* examines all accounts settled by the First and Fifth Auditors, and certifies the balances arising thereon to the Register. He countersigns all warrants drawn by the Secretary of the Treasury. He decides any cases appealed from the decision of the Sixth Auditor, and superintends the recovery of all debts to the United States. He receives $5000 a year.

The *Second Comptroller* examines the accounts settled by the Second, Third, and Fourth Auditors, and certifies the balances to the Secretary of the department in which the expenditure has been incurred. He countersigns all warrants drawn by the Secretaries of the War and Navy Departments. (Those from the Department of the Interior are divided between the two Comptrollers.) The Second Comptroller receives $5000 a year.

THE AUDITORS.

The act of 1789, establishing a Treasury Department, provides for a single Auditor, who was to receive all public accounts, to certify the balance, and transmit the accounts, with the vouchers and certificates, to the Comptroller for his decision. In 1817, four additional Auditors were authorized, and the work was divided among them. In 1836, a Sixth Auditor was added. Each Auditor receives a salary of $3600.

The *First Auditor* examines the accounts accruing in the Treasury Department, and those connected with the salaries of civil officers, territorial accounts, judiciary expenses, contingent expenses of the Senate and House of Representatives, etc.

The *Second Auditor* receives accounts relating to the pay and clothing of the army, the subsistence of officers, bounties and premiums, military and hospital stores, the contingent expenses of the War Department, and those pertaining to Indian affairs.

The *Third Auditor* has charge of accounts relative to the subsistence of the army, the Quartermaster's department, and, generally, all accounts of the War Department other than those provided for.

The *Fourth Auditor* receives all accounts accruing in the Department of the Navy.

The *Fifth Auditor* receives the accounts of the Department of State, including the diplomatic and consular agents; the contingent expenses of the Post-office Department; the expenses of the Census; and the expenses of assessing and collecting the Internal Revenue.

The office of *Sixth Auditor* was created in 1836. His duties are partly those of an Auditor and partly those of a Comptroller. He certifies balances to the Postmaster-General instead of to one of the Comptrollers. He is styled an Auditor of the Treasury for the Post-office Department, and has direct official relations to both these departments. The other Auditors transmit their statements to the Comptrollers for revision and final decision, but the Sixth Auditor's decisions are final, except special appeal is taken to the First Comptroller.

The office of *Treasurer* was created in 1789. It is his duty to receive and keep the moneys of the United States, and to disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by the First Comptroller, and recorded by the Register. In 1846 certain rooms and vaults in the new Treasury buildings were appropriated to the use of the Treasurer, which, with other apartments provided as places of deposit of the public money, were constituted "The Treasury of the United States." Provision was made for the appointment of four Assistant Treasurers—at New York, Boston, Charleston, and St. Louis—and the treasurers of the mints at Philadelphia and New Orleans were to act as such, having the care of the public moneys deposited with them. When the national banks were established, in 1863, the Secretary of the Treasury was authorized to designate them as depositaries of public moneys, except receipts from customs, and they could be employed as financial agents of the government.

The signature of the Treasurer is on all the treasury-notes issued by the United States, and on all the postal or fractional currency. Mr. F. E. Spinner held this office from 1860 to 1875. The salary is $6000.

Besides those mentioned above, there are Assistant Treasurers at Baltimore, Cincinnati, Chicago, and San Francisco. Their salaries are as follows: New York, $8000; Boston, Philadephia, St. Louis, Baltimore, Cincinnati, Chicago, $4500; New Orleans, $4000; San Francisco, $5500.

The office of *Register* was created in 1789. It was made his duty to keep all accounts of the receipts and expenditures, and of all debts due to or from the United States; to preserve with their vouchers accounts which have been finally adjusted; and to record all warrants for the receipts or payment of moneys at the treasury, and certify the same thereon. He signs all stocks and bonds of the United States, and superintends their issue. He signs all treasury-notes, and "keeps the great ledgers which show the whole receipts and expenditures of the government." His salary is $4000.

There was no *Commissioner of Customs* until 1849, when certain acts and powers relating to the receipts from customs and accounts of collectors and other officers, which had before devolved on the First Comptroller, were transferred to this new officer. His salary is $4000.

In 1863 a separate bureau was established in the Treasury Department, called the *Bureau of Currency*, to be under the direction of an officer denominated the *Comptroller of the Currency.* The act establishing this bureau was the "Act to provide a National Currency, secured by a pledge of United States Bonds, and to provide for the circulation and redemption thereof," passed February 25th, 1863, and subsequently superseded by an act for the same purpose, passed June 3d, 1864.

It is the duty of the Comptroller to see that all banking associations established under this act are organized and managed according to law; to provide the banks with notes for circulation; to send agents to examine into their condition; to close up the affairs of such as fail to pay their notes; and report annually to Congress their condition, etc.

Since the organization of the national banking system, the number of banks organized, to November 1st, 1876, was 2343; of these forty-nine have failed, and two hundred and seven have gone into voluntary liquidation; leaving 2087 in existence at that time. The salary of the Comptroller of the Currency is $5000.

Bureau of Internal Revenue.—The act establishing this bureau, the head of which is styled *Commissioner of Internal Revenue*, was passed in 1862. A similar office was created in 1813, and the officer was styled Commissioner of Revenue; it was abolished, however, by the act of December 23d, 1817. For a period of five years, commencing with 1863, the receipts into the treasury from Internal Revenue largely exceeded those from Customs, but they are now much diminished. In the year ending June, 1866, the receipts from this source were three hundred and nine millions of dollars; in the year ending June, 1872, they were but one hundred and thirty millions. For the year ending June, 1877, the income was one hundred and eighteen millions. The Internal Revenue taxes have been repealed for the most part, except those on tobacco, on malt and spirituous liquors, and a few stamp duties.

The salary of the Commissioner is $6000. Formerly there were three Deputy Commissioners: there is now but one. His salary is $3200.

The act establishing the Bureau of Internal Revenue provided for the appointment of an *Assessor* and a *Collector* in each collection district, and for twenty-five *Supervisors.* The office of Assessor ceased July 1st, 1873, and the duties are devolved on the Collectors.

In 1866, a *Bureau of Statistics* was established, the Director of which is to prepare the annual report on the statistics of commerce and navigation, and exports and imports; and to prepare and publish monthly reports of various statistics. His salary is $2400.

By act of February 12th, 1873, *The Mint of the United States* was established as a Bureau of the Treasury Department, the chief officer to be styled *The Director of the Mint.* He is to have the general supervision of all mints and assay offices. His salary is $4500 and traveling expenses. The Superintendents of the mints at Philadelphia and San Francisco also receive $4500 each; those at Carson, Denver, and New Orleans, smaller salaries.

The Bureau of Engraving and Printing was established in 1874. The design is to have executed under its supervision the internal revenue stamps, the national bank notes, and the notes, bonds, and securities of the United States.

The office of the *Coast Survey* is connected with the Treasury Department. It has for its object the preparation of charts prepared from actual survey of the entire sea-coast of the United States. There have been but four Superintendents since the work was begun in 1807, viz., F. R. Hassler, A. D. Bache, Benjamin Pierce, and C. P. Patterson. The salary is $6000. The surveys of the Great Lakes are under the control of the War Department.

In 1852, the *Light-house Board* was constituted. It consists of three officers of the army, three of the navy, and two civilians of high scientific attainments, with the Secretary of the Treasury as *ex officio* president. To this board are committed all duties pertaining to the construction and superintendence of light-houses, light-vessels, beacons, buoys, etc. The number of light-houses, stake lights, etc., in 1876, was nine hundred and seventy-four; and the number of light-keepers nine hundred and ninety-one.

In the collections of customs many persons are employed in connection with the different custom-houses. The chief officer is the *Collector*. The *Naval Officer* and the *Surveyor* have important duties, which are not very clearly indicated by their names. They are appointed only in the larger ports. All these officers are paid by fees, but their compensation is limited as follows: Collector, $6000; Naval Officer, $5000; Surveyor, $4500.

The *Supervising Architect* has the general charge of planning and constructing all United States Buildings, as custom-houses, court-houses, post-offices, marine hospitals, mints, etc. His salary is $4500.

THE WAR DEPARTMENT.

The office of *Secretary of War* was created in 1789. Such a department existed before the adoption of the Constitution, and "an ordinance for ascertaining the powers and duties of the Secretary at War" was passed by the Continental Congress, January 27th, 1785. The Department of the Navy was not established till 1798, and up to that time the duties of the Secretary of War extended to naval as well as military affairs.

The salary of the Secretary of War was for thirty years $500 less than those of the Secretaries of State and the Treasury, being $3000 in 1789, and $4500 in 1799. In 1819 the salaries of the four Secretaries were made equal—$6000. In 1853 they were made $8000; in 1873, $10,000; and in 1874, $8000.

The office has been held by the following persons:

Henry Knox,	Mass.,	appointed	Sept. 12, 1789.
Timothy Pickering,	Mass.,	"	Jan. 2, 1795.
John McHenry,	Md.,	"	Jan. 27, 1796.
John Marshall,	Va.,	"	May 7, 1800.[1]
Samuel Dexter,	Mass.,	"	May 13, 1800.
Roger Griswold,	Conn.,	"	Feb. 3, 1801.[2]
Henry Dearborn,	Mass.,	"	March 5, 1801.
William Eustis,	Mass.,	"	March 7, 1809.
John Armstrong,	N. Y.,	"	Jan. 13, 1813.
James Monroe,	Va.,	"	Sept. 27, 1814.
William H. Crawford,	Ga.,	"	March 3, 1815.
Isaac Shelby,	Ky.,	"	March 5, 1817.[3]
George Graham,	Va.,	"	April 7, 1817.
John C. Calhoun,	S. C.,	"	Oct. 8, 1817.
James Barbour,	Va.,	"	March 7, 1825.
Peter B. Porter,	N. Y.,	"	May 26, 1828.
John H. Eaton,	Tenn.,	"	March 9, 1829.
Lewis Cass,	Mich.,	"	Aug. 1, 1831.
Benjamin F. Butler,	N. Y.,	"	March 3, 1837.
Joel R. Poinsett,	S. C.,	"	March 7, 1837.
John Bell,	Tenn.,	"	March 5, 1841.
John McLean,	Ohio,	"	Sept. 13, 1841.[3]
John C. Spencer,	N. Y.,	"	Oct. 12, 1841.
James M. Porter,	Penn.,	"	March 8, 1843.
William Wilkins,	Penn.,	"	Feb. 15, 1844.
William L. Marcy,	N. Y.,	"	March 5, 1845.

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[1] Nominated May 7. Action postponed by Senate. Appointed Secretary of State May 13. [2] Declined to serve. [3] Declined.

George W. Crawford,	Ga.,	appointed	March 7, 1849.
Charles M. Conrad,	La.,	"	Aug. 15, 1850.
Jefferson Davis,	Miss.,	"	March 5, 1853.
John B. Floyd,	Va.,	"	March, 6, 1857.
Joseph Holt,	Ky.,	"	Jan. 18, 1861.
Simon Cameron,	Penn.,	"	March 5, 1861.
Edwin M. Stanton,	Penn.,	"	Jan. 15, 1862.[1]
Ulysses S. Grant,	Ill.,	*ad interim*,	Aug. 12, 1867.
Edwin M. Stanton,	Penn.,	appointed	Jan. 13, 1868.[2]
John M. Schofield,	Mo.,	"	May 29, 1868.
John A. Rawlins,	Ill.,	"	March 12, 1869.
William W. Belknap,	Iowa,	"	Nov. 1, 1869.
Alphonso Taft,	Ohio,	"	March 9, 1876.
J. Donald Cameron,	Penn.,	"	May 22, 1876.
George W. McCrary,	Iowa,	"	March 10, 1877.

The War Department is divided into various subdivisions, in which are employed many men, civilians as well as those connected with the army. These different offices, which will be understood from their titles, are as follows:

The Office of the Adjutant-General,
The Office of the Quartermaster-General,
The Office of the Commissary-General,
The Office of the Paymaster-General,
The Office of the Surgeon-General,
The Office of the Chief-of-Engineers,
The Ordnance Office,
The Signal Office,
The Bureau of Military Justice.

The Signal Office and the Bureau of Military Justice, were established in 1866. The Chief Signal officer has the rank and pay of a colonel of cavalry. The Bureau of Military Justice is in charge of a Judge-Advocate-General, who has the rank and pay of a Brigadier-General.

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[1] Suspended by President Johnson August 12th, 1867.

[2] Restored by the Senate. Resigned May 26th, 1868.

The Military Academy at West Point, in the State of New York, is connected with the War Department. It was established in 1802. At first, provision was made for only ten cadets, but in 1812 Congress authorized the number to be increased to two hundred and fifty. The present corps of cadets consists of one from each Congressional District, one from each Territory, one from the District of Columbia, and ten from the United States at large; these are all appointed by the President. They must be between the ages of seventeen and twenty-two, and pledge themselves, with the consent of parents or guardians, to serve eight years unless sooner discharged.

The superintendent and most of the instructors are officers of the army. The Academy is wholly supported by the government, an allowance being made to each cadet sufficient to pay his entire expenses of clothing, board, etc. The appropriation voted for the Academy for the year ending June 30th, 1878, was $293,000.

By act of July 15th, 1870, the army officers receive yearly pay as follows;

General, $13,500.
Lieut.-General, $11,000.
Major-General, $7500.
Brigadier-General, $5500.
Colonel, $3500.
Lieut.-Colonel, $3000.
Major, $2500.
Captain, mounted, $2000.
Captain, not mounted, $1800.
Regimental Adjutant, $1800.
Regimental Q. M., $1800.
1st Lieut., mounted, $1600.
1st Lieut., not “ $1500.
2d Lieut., mounted, $1500.
2d Lieut., not “ $1400.
Chaplain, $1500.

To each commissioned officer below the rank of Brigadier-General, the pay is increased ten per centum for every term of five years service, but the increase is not to exceed forty per centum. Officers retired from service receive seventy-five per centum of the pay of the rank upon which they are retired. The pay of privates is thirteen dollars a month, with one dollar a month added for the third year of enlistment, one more for the fourth, and one for the fifth. The officers are paid monthly.

DEPARTMENT OF THE NAVY.

This department was established by act of Congress, April 30th, 1798, its chief officer being styled the Secretary of the Navy.

In 1861 an Assistant Secretary was authorized, but the office expired March 4th, 1869.

The following persons have been Secretaries of the Navy:

George Cabot,	Mass.,	appointed	May 3, 1798.[1]
Benjamin Stoddart,	Md.,	"	May 21, 1798.
Robert Smith,	Md.,	"	July 15, 1801.
Jacob Crowninshield,	Mass.,	"	March 2, 1805.
Paul Hamilton,	S. C.,	"	March 7, 1809.
William Jones,	Penn.,	"	Jan. 12, 1813.
B. W. Crowninshield,	Mass.,	"	Dec. 17, 1814.
Smith Thompson,	N. Y.,	"	Nov. 9, 1818.
John Rodgers,	Md.,	"	Sept. 1, 1823.[1]
Samuel L. Southard,	N. J.,	"	Sept. 16, 1823.
John Branch,	N. C.,	"	March 9, 1829.
Levi Woodbury,	N. H.,	"	May 23, 1831.
Mahlon Dickerson,	N. J.,	"	June 30, 1834.
James K. Paulding,	N. Y.,	"	June 30, 1838.
George E. Badger,	N. C.,	"	March 5, 1841.
Abel P. Upshur,	Va.,	"	Sept. 13, 1841.[2]
David Henshaw,	Mass.,	"	July 24, 1843.
Thomas W. Gilmer,	Va.,	"	Feb. 15, 1844.
John Y. Mason,	Va.,	"	March 14, 1844.

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[1] Declined. [2] Killed, February 28th, on U. S. Steam Frigate Princeton, by bursting of a cannon.

George Bancroft,	Mass.,	appointed	March 10, 1845.
John Y. Mason,	Va.,	"	Sept. 9, 1846.
William B. Preston,	Va.,	"	March 7, 1849.
William A. Graham,	N. C.,	"	July 20, 1850.
John P. Kennedy,	Md.,	"	July 22, 1852.
James C. Dobbin,	N. C.,	"	March 7, 1853.
Isaac Toucey,	Conn.,	"	March 6, 1857.
Gideon Welles,	Conn.,	"	March 5, 1861.
Adolph E. Borie,	Penn.,	"	March 5, 1869.
George M. Robeson,	N. J.,	"	June 25, 1869.
Rich'd W. Thompson,	Ind.,	"	March 10, 1877.

The salary of the Secretary of the Navy was at first $3000. In 1799 it was made $4500; in 1819, $6000; in 1853, $8000; in 1873, $10,000; and in 1874, $8000.

By act of July 5th, 1862, there were established eight Bureaus in the Navy Department, for each of which a chief should be appointed from the list of the officers of the Navy by the President. These chiefs of Bureaus hold their office for four years.

The Bureau of Yards and Docks.--Vessels are built and repaired at Navy Yards, of which the government has nine, viz., at Kittery, Maine;[1] Charlestown, Mass.;[1] New London, Conn.; Brooklyn, N. Y.; League Island, Penn.; Washington, D. C.; Norfolk, Va.; Pensacola, Fla.; and Mare Island, Cal. There are Naval Stations at Sackett's Harbor, N. Y., and at Key West, Fla. This bureau has charge of the construction and maintenance of all docks, piers, etc., within the Navy Yards. It has charge also of the Naval Arsenals, and of the Naval Asylum. The expenditures for the year ending June 30th, 1876, were $1,712,000.

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[1] The Navy Yard at Kittery, Maine, is the same as that known as the Portsmouth (N. H.) Navy Yard. The one at Charlestown is often spoken of as at Boston. Both names, Boston and Charlestown, are applied to the same Navy Yard in the same statute. U. S. Statutes at Large, XVII, p. 552.

The Bureau of Equipment and Recruiting.—This bureau supplies vessels in commission with rigging, sails, anchors, fuel, etc. It has charge of recruiting all seamen, landsmen, and boys for the service; and the charge also of receiving-ships and recruiting rendezvous.

The Bureau of Navigation.—This bureau has supervision of what relates to the Hydrographic Office, the Naval Observatory, the Nautical Almanac, the Signal Office, and Naval Apprentices.

The Observatory was established in 1842, under the name of "Depot for Naval Charts and Instruments." The Superintendent is Rear-Admiral John Rodgers.

The Bureau of Ordnance.—To this bureau belongs the general charge of providing and storing guns and ammunition of every kind. Under its direction experiments are made to test new species of ordnance and ammunition. The subject of torpedoes has recently received much attention.

The Bureau of Medicine and Surgery.—There are eight naval hospitals and one laboratory under the charge of this bureau, which also furnishes all medical supplies for the department.

The Bureau of Provisions and Clothing.—The name of this bureau indicates its duties.

Bureau of Steam Engineering.—All that pertains to the steam machinery by which vessels are impelled comes under the charge of this bureau.

Bureau of Construction and Repair.—This bureau has charge of all that relates to planning, building, and repairing vessels, both wood and iron, as distinct from the engines and machinery by which they are impelled.

The Naval Academy.—This institution, which sustains to the Navy the same relation the Military Academy at West Point does to the Army, seems not to have been established by an act of Congress, but to have been commenced by the Navy Department without formal legislation. The first action of Congress regarding it is found in the act making appropriations for the naval service, August 10th, 1846. This provides that of the money appropriated for "pay of the navy" and "contingent expenses enumerated," an amount not exceeding $28,200 may be expended under the direction of the Secretary of the Navy for repairs, improvements, and instruction, at Fort Severn, Annapolis, Maryland. In March, 1847, a like sum was appropriated for the same purposes, "and for the purchase of land for the use of the naval school at that place, not exceeding twelve acres."

The students, who are called cadet-midshipmen, must be, when appointed, not under fourteen years of age, nor over eighteen. There may be one from each congressional district, and one from each Territory, with ten at large. The latter are appointed by the President, the others are nominated to the Secretary of the Navy by the Representatives and Delegates in Congress. From 1862 to 1867 two were authorized from every congressional district.

The course of study has been four years, but it is now changed to six, commencing with the class entering in 1873. They become midshipmen on graduating, and are promoted to ensigns as vacancies occur, promotion being according to class rank.

A course of study has been provided for cadet-engineers, to be appointed, to the number of fifty, by the Secretary of the Navy. The course embraces four years of study at the Academy, and two years of service in naval sea-steamers. Their pay is that of midshipmen.

The appropriation for the Naval Academy for the year ending June 30th, 1874, is $193,457; of which $64,000 is for "contingent expenses."

The yearly pay of the Officers of the Navy is as follows:

	At sea.	On shore duty.	On leave, or waiting orders.
Admiral,	$13,000	$13,000	$13,000
Vice-Admiral,	9,000	8,000	6,000
Rear-Admiral,	6,000	5,000	4,000
Commodore,	5,000	4,000	3,000
Captain,	4,500	3,500	2,800
Commander,	3,500	3,000	2,300
Lieutenant-Com.,	2,800	2,400	2,000
Lieutenant,	2,400	2,000	1,600
Master,	1,800	1,500	1,200
Ensign,	1,200	1,000	800
Midshipman,	1,000	800	600
Surgeon, Paymaster, and Chief Engineer,	2,800	2,400	2,000
Fleet Surgeon, Paymaster, and Chief Engineer,	4,400	4,400	4,400
Passed Ass't Surgeon, Paymaster, and Chief Engineer,	2,000	1,800	1,500
Assistant Surgeon, Paymaster, and Chief Engineer,	1,700	1,400	1,000
Chaplain,	2,500	2,000	1,600
Professor of Mathematics, and Civil Engineer,	2,400	2,400	1,500

Most of those who are below the grade of Commanders have their pay increased after five years of service by from $200 to $400 a year; with some this increase is but once, but with others the pay is increased at the end of each five years up to twenty.

The pay of officers retired after forty years' service, or on attaining the age of sixty-two years, or from incapacity resulting from long and faithful service, from wounds or injuries received in the line of duty, or from sickness or exposure therein, is seventy-five per centum of the sea-pay of their grade when retired; in all other cases the pay of retired officers is one-half the sea-pay.

The pay of "seamen" in the navy is twenty dollars a month; of "ordinary seamen," sixteen dollars; of "landsmen," fourteen dollars; of "boys," from eight to ten dollars.

Until September, 1862, a spirit ration was allowed in the navy; from that time it was abolished, and five cents a day allowed in place of it. This allowance was abolished from June 30th, 1870. Thirty cents a day is now the commutation price of a navy ration.

DEPARTMENT OF THE INTERIOR.

This department was established by act of Congress, March 3d, 1849. The act is entitled "An Act to establish the Home Department." A department was proposed under that name in 1789. The duties of the department relate to various offices which have been transferred to it from other departments. It is less homogeneous, therefore, than the others.

At its establishment the Patent Office and the Census Office were transferred to it from the Department of State; the Land Office, the charge of Mines, and the accounts of officers of the Courts, from the Department of the Treasury; the charge of Indian affairs from the Department of War; the charge of Pensions from the Departments of War and the Navy; and the care of Public Buildings from the President. Subsequently it was charged with the duty of receiving and distributing public documents, and with duties relating to Territories, which had been performed by the State Department. The Department of Education, which was at first independent, has been made an office in this department.

The salary has been the same as the other Secretaries have received, being now $8000. An Assistant

Secretary was authorized in 1862. His compensation is now $3500.

The Secretaries have been as follows:

Thomas Ewing,	Ohio,	appointed	March 7, 1849.
Alexander H. H. Stuart,	Va.,	"	Sept. 12, 1850.
Robert McClelland,	Mich.,	"	March 7, 1853.
Jacob Thompson,	Miss.,	"	March 6, 1857.[1]
Caleb B. Smith,	Ind.,	"	March 5, 1861.
John P. Usher,	Ind.,	"	Jan. 8, 1863.
James Harlan,	Iowa,	"	May 15, 1865.
Orville H. Browning,	Ill.,	"	July 27, 1866.
Jacob D. Cox,	Ohio,	"	March 5, 1869.
Columbus Delano,	Ohio,	"	Nov. 1, 1870.
Zachariah Chandler,	Mich.,	"	Oct. 19, 1875.
Carl Schurz,	Mo.,	"	March 10, 1877.

The Patent Office.—This bureau is under the superintendence of a Commissioner, who is assisted by an Assistant Commissioner. There is a large corps of Examiners, Assistant Examiners, Clerks, Copyists, and Laborers employed in the Patent Office. Besides the charge of this large force, the Commissioner has a large amount of judicial work to perform—in hearing and deciding cases relating to patents. The Commissioner receives $4500, and the Assistant Commissioner $3000, a year.

The Pension Office.—By act of March 3d, 1835, the office of Commissioner of Pensions was created for two years. It was extended from time to time, and made permanent in 1849. He was to execute, under the direction of the Secretaries of War and the Navy, such duties in relation to the various pension laws as might be prescribed by the President.

The provisions relating to pensions are too numerous and complicated to allow of a clear statement regarding them in this treatise. An act was passed March 3d

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[1] Resigned January 8th, 1861.

1873, to revise, consolidate, and amend the laws relating to the general subject. The salary of the Commissioner is $3600.

The Land-Office.—The public lands of the United States which are for sale are under the care of an officer styled the Commissioner of the General Land-Office. This office was created in 1812, and it was made the duty of the Commissioner to attend to various matters touching the public lands which had before that been transacted in the several departments of State, of the Treasury, and of War. The Land-Office was placed in the Department of the Treasury till, on the creation of that of the Interior, in 1849, it was transferred to that department. The Commissioner's salary is $4000.

The principal officers under the Commissioner are:

Surveyors General,
Registers of Land-Offices,
Receivers of Land-Offices.

There are now seventeen Surveyors-General, one in each land district. Under their direction all the land is accurately surveyed and described, and thus prepared for sale. The United States system of surveys provides for the division of the lands into ranges, townships, sections, and fractions of sections. The ranges are bounded by meridian lines, six miles apart, and are numbered east and west from a principal meridian. These are divided into townships, of six miles square, numbered north and south from a given parallel. Townships are divided into thirty-six sections of one mile square, or six hundred and forty acres. The sections are divided into quarters, which are again subdivided into sixteenths.

The sections in a township are numbered, beginning at one in the north-east section, and proceeding West and East alternately, as indicated in the annexed diagram. The description of land is thus made exact to tracts of forty acres; as, the N. W. ¼ of the N. E. ¼ of Section 19, Town 27 North, Range 18 West.

Registers are appointed in the several land districts, who receive applications for lands in their districts, file receipts for payments, and, on the final payment, give to the purchaser a certificate which entitles him to a patent, *i. e.*, a deed from the United States. Formerly the patent was signed by the President, and countersigned by the Secretary of State;[1] now a secretary is appointed by the President, who signs patents in his name, and they are countersigned by the Recorder.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

The government price of land is one dollar and a quarter an acre. Previous to 1800 the price was two dollars. For alternate reserved lands along the line of railroads within the limits granted by any act of Congress, the price is two dollars and fifty cents an acre. From 1854 to 1862 land long in market was sold at reduced rates. The sale of mineral lands is regulated by special laws.

The *Receiver* receives money or land-scrip from the purchaser, giving receipts therefor, which are passed over to the Register.

The Register and Receiver are largely paid by fees, but the whole compensation must not exceed $3000. They are entitled to fees in cases of military warrants and homestead entries, as in other cases.

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[1] Three patents to the Ohio Company for 1,228,168 acres, dated May 10th, 1792, are signed by G^{o}. Washington, and countersigned by Th: Jefferson. These patents, the first issued by the government to a purchaser, are in the library of Marietta College.

The Commissioner of Indian Affairs.—Until 1832 the business of the government relating to the Indians had been managed by the clerks in the War Department. In that year Congress authorized the President to appoint a Commissioner, who should, under the direction of the Secretary of War, have the general superintendence of all Indian affairs.

The Commissioner has the direction of the eight Superintendents, and a large number of agents and subagents, under whom are many teachers, mechanics, laborers, etc. The salary of the Commissioner is $3000.

The Superintendent of the Census.—The census is taken once in ten years. The office of Superintendent is not permanent, therefore; but its duties are highly responsible, and require great accuracy and system. The census returns are of great value. The salary of the Superintendent is $3000.

The Bureau of Education.—In 1867 "a Department of Education" was established at Washington, for the purpose of collecting statistics showing the condition and progress of education in the States and Territories, and of diffusing such information as should promote the cause of education throughout the country. In 1868 Congress enacted that "the Department of Education" should cease, and that there should be established and attached to the Department of the Interior an office to be denominated The Office of Education, the chief officer of which should be styled the Commissioner of Education, who should perform the duties before prescribed. His salary is $3000.

THE DEPARTMENT OF AGRICULTURE.

In 1862 a Department of Agriculture was established at Washington, the object of which was to acquire and diffuse among the people useful information on subjects connected with Agriculture. The chief officer was styled a Commissioner of Agriculture. Among other things it was provided that he should "receive and have charge of all the property of the agricultural division of the Patent Office in the Department of the Interior, including the fixtures and property of the propagating garden."

There seems to be no more reason for calling this a "department" than in the case of the Office of Education. In his message of 1871 the President speaks of it in one sentence as a "department" and in another as the "Agricultural Bureau." For many years previous to 1862, the Patent Office Report was partly devoted to agricultural facts and statistics.

It is noticed here, because, though nominally independent, it might well be considered a Bureau of the Department of the Interior. The salary of the Commissioner is $3000.

Miscellaneous.—The Secretary of the Interior has the general charge of the Penitentiary in the District of Columbia, and of those in the Territories. The following act was passed in March, 1873: "That the Secretary of the Interior shall hereafter exercise all the powers and perform all the duties in relation to the Territories of the United States that are now by law or by custom exercised and performed by the Secretary of State."

POST-OFFICE DEPARTMENT.

There were arrangements for carrying letters by mail before the colonies separated from the mother country. Dr. Benjamin Franklin had the general superintendence under the British government, and in July, 1775, he was appointed, by the Second Continental Congress, "Postmaster-General of the United Colonies." When the Constitution went into operation, Congress, by act of September 22d, 1789, provided for the "temporary establishment of the Post-office," the regulations to be "the same as they last were under the resolutions and ordinances of the late Congress."

In 1792 an act was passed to establish a General Post-office. There was to be a Postmaster-General, who should have power to appoint an Assistant, and Deputy Postmasters at all places where such should be found necessary; he was also "to superintend the business of the department" in all the duties that should be assigned to it. This act was, indeed, limited to two years, but in 1794 a similar one was enacted, which had no limitation of time. We may say, therefore, that the Post-office Department has been in operation from the first Congress under the Constitution.[1] An act to revise, consolidate, and amend the statutes relating to the Post-office Department, containing three hundred and twenty-seven sections, was passed June 8th, 1872. The Salary of the Postmaster-General was $2000 in 1792, $3000 in 1799, $4000 in 1819, $6000 in 1827, $8000 in 1853, $10,000 in 1873, and $8000 in 1874.

It is said that the Postmaster-General did not attend the meetings of the Cabinet prior to the administration of President Jackson, who invited Mr. Barry to be present at their meetings. The practice has been continued from that time.

The list of Postmasters-General is as follows:

Samuel Osgood,	Mass.,	appointed	Sept. 26, 1789.
Timothy Pickering,	Mass.,	"	Aug. 12, 1791.
Joseph Habersham,	Ga.,	"	Feb. 25, 1795.
Gideon Granger,	Conn.,	"	Nov. 28, 1801.

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[1] Mr. Gillet, in his work on The Federal Government, says: "There has never been any statute establishing a Post-office Department. * * It is first spoken of as a Post-office Department in the title of an act in 1825." But that title itself is, "An Act to reduce into one the several acts establishing and regulating the Post-office Department." This very title thus asserts that previous acts had established such a department. We have seen above that the General Post-office was called a "department" in the act of 1792. An act of March, 3d, 1801, speaks "of the several departments of the Treasury, of War, of the Navy, and of the General Post-office."

Return J. Meigs, Jr.	Ohio,	appointed	March 17, 1814.
John McLean,	Ohio,	“	June 26, 1823.
William T. Barry,	Ky.,	“	March 9, 1829.
Amos Kendall,	Ky.,	“	May 1, 1835.
John M. Niles,	Conn.,	“	May 25, 1840.
Francis Granger,	N. Y.,	“	March 6, 1841.
Charles A. Wickliffe,	Ky.,	“	Sept. 13, 1841.
Cave Johnson,	Tenn.,	“	March 5, 1845.
Jacob Collamer,	Vt.,	“	March 7, 1849.
Nathan K. Hall,	N. Y.,	“	July 20, 1850.
Samuel D. Hubbard,	Conn.,	“	Aug. 31, 1852.
James Campbell,	Penn.,	“	March 7, 1853.
Aaron V. Brown,	Tenn.,	“	March 6, 1857.
Joseph Holt,	Ky.,	“	March 14, 1859.
Horatio King,	N. H.,	“	Feb. 12, 1861.
Montgomery Blair,	Md.,	“	March 5, 1861.
William Dennison,	Ohio,	“	Sept. 24, 1864.
Alexander W. Randall,	Wis.,	“	July 25, 1866.
John A. J. Creswell,	Md.,	“	March 5, 1869.
Marshall Jewell,	Conn.,	“	Aug. 24, 1874.
James M. Tyner,	Ind.,	“	July 18, 1876.
David M. Key,	Tenn.,	“	March 10, 1877.

There are three Assistant Postmasters-General; the Postmaster-General appointed them until 1853; since then the President and Senate. The salary is $3500.

The *First Assistant Postmaster-General* has the superintendence of matters relating to the establishment and discontinuance of post-offices, the appointment and removal of postmasters, furnishing blanks and stationery, steamship lines, and international postage. His office is called the *Appointment Office.*

Under the charge of the *Second Assistant Postmaster-General* belongs whatever relates to letting contracts for carrying the mails, the mode of conveyance, the time of arrival and departure, offices of distribution, etc. This is known as the *Contract Office*

The *Third Assistant Postmaster-General* has charge of the general financial business of the department, provides stamps and stamped envelopes, receives the quarterly returns from Postmasters, and superintends the dead-letter office. This is the *Finance Office.*

The office of the *Superintendent of the Money-order System* is now a bureau, like the three just mentioned, with its chief clerk. The salary of the head of this bureau is $3000.

In the office of the *Superintendent of Foreign Mails* there is also a chief clerk. The salary of the Superintendent is $3000.

There are six *Chief Clerks*, viz., in the Post-office Department, in the Appointment Office, in the Contract Office, in the Finance Office, in the Money-order Office, and in the Office of Foreign Mails. Formerly there was but one — in the Post-office Department — and his office was regarded as a bureau, and called the *Inspection Office.* He is now the clerk for the Postmaster-General, as the others are for the heads of the bureaus.

DEPARTMENT OF JUSTICE.

This department was created by act of Congress, June 22d, 1870. The Attorney-General is the head of it. While the Department of Justice has been quite recently established, the office of Attorney-General was created in 1789; and this officer, though without a "department," has always been recognized as a member of the Cabinet.

The act of September 24th, 1789, made it his duty to prosecute and conduct all suits in the Supreme Court in which the United States should be concerned, and to give his advice and opinion upon questions of law when required by the President, or when requested by the heads of any of the departments touching any matters concerning their departments.

These opinions are furnished in writing, and subsequently printed. They now form many volumes, and are consulted by the various departments.

In 1861 he was charged with the general superintendence of the attorneys and marshals of all the judicial districts in the United States and the Territories. He was also authorized to employ counsel to aid district-attorneys in the discharge of their duties. He examines the title of lands which the government proposes to purchase for forts, dock-yards, custom-houses, or other public purposes.

In 1859 the Attorney-General was authorized to appoint an Assistant. In 1868 Congress provided that, in place of this and three other officers, the President should appoint two Assistant Attorneys-General.

Though the Attorney-General had a seat in the Cabinet from the first, his salary was much below the others. It was fixed, in 1789, at $1500—that of the Secretary of War being $3000, and those of the Secretaries of State and the Treasury, $3500. In 1797, it was made $2000; in 1799, $3000; in 1819, $3500; in 1830, $4000; and in 1850 it was made equal to that of the other members of the Cabinet—$6000. In 1853 it was made $8000; in 1873, $10,000; and in 1874, $8000.

The following persons have held the office of Attorney-General:

Edmund Randolph,	Va.,	appointed,	Sept. 26, 1789.
William Bradford,	Penn.,	"	Jan. 28, 1794.
Charles Lee,	Va.,	"	Dec. 10, 1795.
Theophilus Parsons,	Mass.,	"	Feb. 20, 1801.
Levi Lincoln,	Mass.,	"	March 5, 1801.
Robert Smith,	Md.,	"	March 2, 1805.
John Breckenridge,	Ky.,	"	Aug. 7, 1805.
Cæsar A. Rodney,	Del.,	"	Jan. 20, 1807.
William Pinckney,	Md.,	"	Dec. 11, 1811.
Richard Rush,	Penn.,	"	Feb. 10, 1814.
William Wirt,	Va.,	"	Nov. 13, 1817.

J. McPherson Berrien,	Ga.,	appointed	March 9, 1829.
Roger B. Taney,	Md.,	"	July 20, 1831.
Benjamin F. Butler,	N. Y.,	"	Nov. 15, 1833.
Felix Grundy,	Tenn.,	"	Sept. 1, 1838.
Henry D. Gilpin,	Penn.,	"	Jan. 10, 1840.
John J. Crittenden,	Ky.,	"	March 5, 1841.
Hugh S. Legaré,	S. C.,	"	Sept. 13, 1841.
John Nelson,	Md.,	"	July 1, 1843.
John Y. Mason,	Va.,	"	March 5, 1845.
Nathan Clifford,	Maine,	"	Oct. 17, 1846.
Isaac Toucey,	Conn.,	"	June 21, 1848.
Reverdy Johnson,	Md.,	"	March 7, 1849.
John J. Crittenden,	Ky.,	"	July 20, 1850.
Caleb Cushing,	Mass.,	"	March 7, 1853.
Jeremiah S. Black,	Penn.,	"	March 6, 1857.
Edwin M. Stanton,	Penn.,	"	Dec. 20, 1860.
Edward Bates,	Mo.,	"	March 5, 1861.
James Speed,	Ky.,	"	Dec. 14, 1864.
Henry Stanbery,	Ohio,	"	July 23, 1866.
William M. Evarts,	N. Y.,	"	July 15, 1868.
E. R. Hoar,	Mass.,	"	March 5, 1869.
Amos T. Akerman,	Ga.,	"	July 8, 1870.
Geo. H. Williams,	Oregon,	"	Jan. 9, 1872.
Edwards Pierrepont,	N. Y.,	"	April 26, 1875.
Alphonso Taft,	Ohio,	"	May 22, 1876.
Charles Devens,	Mass.,	"	March 10, 1877.

The Solicitor-General is next in rank to the Attorney-General. The act of 1870 continued the two Assistant Attorneys-General already authorized by the act of 1868. The act also transferred to the Department of Justice the Solicitor of the Treasury and his assistants, and the Solicitor of Internal Revenue, from the Treasury Department, the Naval Solicitor from that of the Navy, and the Examiner of Claims from the Department of State. All these officers were to be appointed by the President and Senate.

The Attorney-General makes an annual report to Congress. He may require any officer of the department to perform any duties required of the department or any officer thereof; and the officers of the law department, under his direction, shall give all opinions and render all services necessary to enable the President and the officers of the Executive Department to discharge their duties. The Secretaries of the various departments are not to employ counsel at the expense of the United States, but to call upon the Department of Justice for the legal service they need.

In 1871 a third Assistant Attorney-General was authorized, with the same salary as the others. There is now a fourth, called the Assistant Attorney-General of the Post-office Department.

The following are the principal officers in the Department of Justice, with their salaries:

Attorney-General,	$8,000.
Solicitor-General,	7,000.
Assistant Attorney-General,	5,000.
Ass't Att.-Gen. at the Court of Claims,	5,000.
Ass't Att.-Gen. in the Department of the Interior,	5,000.
Ass't Att.-Gen. in the Post-office Department,	4,000.
Solicitor of Internal Revenue,	4,500.
Naval Solicitor,	3,500.
Examiner of Claims,	3,500.
Solicitor of Treasury,	4,500.
Assistant Solicitor,	3,000.

There are many persons employed in the various departments at Washington, under different designations, as Clerks, Copyists, Messengers, Laborers, etc. The great body of Clerks are divided into classes known as first, second, third, and fourth. The first class receive $1200 a year; the second, $1400; the third, $1600; and the fourth, $1800. There are a few who, as Disbursing Clerks, or Chiefs of Divisions, etc., receive from $2000 to $2800. The Examiners-in-chief in the Patent-office receive $3000; the Examiners — twenty or more — $2500. Female Clerks and Copyists generally receive $900 a year. Messengers, $840; Assistant Messengers, Watchmen, and Laborers, $720.

THE JUDICIARY.

A full account of the United States Courts has been given in a former part of this work.

The following is a list of Chief Justices of the Supreme Court of the United States:

JOHN JAY, New York, appointed September 26th, 1789. He was confirmed Envoy Extraordinary to England, April 19th, 1794. Resigned as Chief Justice.

JOHN RUTLEDGE, South Carolina, appointed July 1st, 1795, in recess of Senate, and presided at the August term of the Court. Rejected by the Senate, December 15th, 1795.

WILLIAM CUSHING, Massachusetts, appointed by President and Senate, January 27th, 1796. Declined.

OLIVER ELLSWORTH, Connecticut, appointed March 4th, 1796. Appointed Envoy Extraordinary and Minister Plenipotentiary to France, February 27th, 1799. Resigned as Chief Justice.

JOHN JAY, New York, appointed by President and Senate, December 19th, 1800. Declined.

JOHN MARSHALL, Virginia, appointed January 31st, 1801. He held the office nearly thirty-five years, till his death, July 6th, 1835.

ROGER B. TANEY, Maryland, appointed March 15th, 1836. He presided twenty-eight years, till his death, October 12th, 1864.

SALMON P. CHASE, Ohio, appointed December 6th, 1864. Died in office, May 7th, 1873.

MORRISON R. WAITE, Ohio, appointed January 21st, 1874.

The following is a list of the Associate Justices:

		Term of Service.
John Rutledge,	S. C.,	1789 to 1791.[1]
William Cushing,	Mass..	1789 to 1810.[2]
James Wilson,	Penn.,	1789 to 1798.[2]
John Blair,	Va.,	1789 to 1796.[1]
Robert H. Harrison,	Md.,	1789 to 1790.[1]
James Iredell,	N. C.,	1790 to 1799.[2]
Thomas Johnson,	Md.,	1791 to 1793.[1]
William Patterson,	N. J.,	1793 to 1806.[2]
Samuel Chase,	Md.,	1796 to 1811.[2]
Bushrod Washington,	Va.,	1798 to 1829.[2]
Alfred Moore,	N. C.,	1799 to 1804.[1]
William Johnson,	S. C.,	1804 to 1834.[2]
Brockholst Livingston,	N. Y.,	1806 to 1823.[2]
Thomas Todd,	Ky.,	1807 to 1826.[2]
Levi Lincoln,	Mass.,	Declined.
John Quincy Adams,	Mass.,	Declined.
Gabriel Duval,	Md ,	1811 to 1835.[1]
Joseph Story,	Mass.,	1811 to 1845.[2]
Smith Thompson,	N. Y.,	1823 to 1843.[2]
Robert Trimble,	Ky.,	1826 to 1828,[2]
John McLean,	Ohio,	1829 to 1861.[2]
Henry Baldwin,	Penn.,	1830 to 1846.[2]
James M. Wayne,	Ga.,	1835 to 1867.[2]
Philip P. Barbour,	Va.,	1836 to 1841.[2]
John Catron,	Tenn.,	1837 to 1865.[2]
William Smith,	Ala.,	Declined.
John McKinley,	Ala.,	1837 to 1852.[2]
Peter V. Daniel,	Va.,	1841 to 1860.[2]
Samuel Nelson,	N. Y.,	1845 to 1872.[3]
Levi Woodbury,	N. H.,	1845 to 1851.[2]
Robert C. Grier,	Penn.,	1846 to 1870.[3]
Benjamin R. Curtis,	Mass.,	1851 to 1857.[1]
John A. Campbell,	Ala.,	1853 to 1856.[1]

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[1] Resigned. [2] Died. [3] Resigned, with salary continued.

		Term of Office.
Nathan Clifford,	Maine	1858 to ——.
Noah H. Swayne,	Ohio,	1862 to ——.
Samuel F. Miller,	Iowa,	1862 to ——.
David Davis,	Ill.,	1862 to 1877.[1]
Stephen J. Field,	Cal.,	1863 to ——.
William Strong,	Penn.,	1870 to ——.
Joseph P. Bradley,	N. J.,	1870 to ——.
Ward Hunt,	N. Y.,	1872 to ——.
John M. Harlan,	Ky.,	1877 to ——.

The thirty-eight States are divided into nine Judicial Circuits, each having its own Circuit Judge, and to each one of which a Justice of the Supreme Court is allotted by order of that Court. The Circuits are as follows:

1st. Maine, Massachusetts, New Hampshire, Rhode Island.

2d. Connecticut, New York, Vermont.

3d. Pennsylvania, New Jersey, Delaware.

4th. Maryland, West Virginia, Virginia, North Carolina, South Carolina.

5th. Georgia, Florida, Alabama, Mississippi, Louisiana, Texas.

6th. Ohio, Michigan, Kentucky, Tennessee.

7th. Indiana, Illinois, Wisconsin.

8th. Minnesota, Iowa, Missouri, Kansas, Arkansas, Nebraska, Colorado.

9th. California, Oregon, Nevada.

The Judges of the Circuits are as follows:

Circuit.	*Supreme Judge.*	*Circuit Judge.*
1st.	Nathan Clifford,	George F. Shepley.
2d.	Ward Hunt,	Samuel Blatchford.
3d.	William Strong,	William McKennan.
4th.	Chief Justice,	Hugh L. Bond.

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[1] Resigned, March, 1877.

Circuit.	*Supreme Judge.*	*Circuit Judge.*
5th.	Joseph P. Bradley,	William B. Woods.
6th.	Noah H. Swayne,	John Baxter.
7th.	John M. Harlan,	Thomas Drummond.
8th.	Samuel F. Miller,	John F. Dillon.
9th.	Stephen J. Field,	Lorenzo Sawyer.

The salary of the Chief Justice of the Supreme Court is $10,500; that of each Associate Justice, $10,000. The Circuit Judges receive each $6000, and the District Judges, fifty-one in number, from $3500 to $5000 each. The Chief Justice of the Supreme Court of the District of Columbia receives $4500, and each of the Associate Justices the same sum; the same salaries are paid in the Court of Claims.

In each organized Territory there are a Chief Justice and two Associates, appointed by the President and Senate for four years. They receive $2600 each.

The Marshal and Reporter of the Supreme Court are appointed by the Court, and receive salaries; the former $3000, the latter $2500.

The Attorney and Marshal for the District Courts, who are officers of the Circuit Courts also, are appointed by the President and Senate, and receive each a salary of $200 and fees.

CHAPTER VIII.

THE STATE GOVERNMENTS.

In chapter VI an account has been given of the twenty-four States which have been admitted to the Union since the adoption of the Constitution. The thirteen original States were colonies until the Declaration of Independence. By that act the individual colonies were transformed into States, and the thirteen United Colonies assumed their position as a nation, under the name of the United States. The colonies had exercised some of the powers of government, while they acknowledged a common allegiance to Great Britain. "By the Declaration of Independence the sovereignty of the thirteen colonies passed from the crown to the people dwelling in them, not as an aggregate body, but as forming States endowed with the functions necessary for their separate existence; also States in Union."[1]

The nation began its existence on the fourth day of July, 1776; and on the same day each of the thirteen colonies was transformed into a State — became an integral part of the nation. Each of the *new* States became such, when, having adopted a constitution, it was admitted into the Union by Congress. But the old thirteen did not become States by the formation of a constitution, nor by a Congressional vote of admission. They were made States by the Declaration of Independence. No one of the thirteen was a State prior to that day, though a few of them had established temporary forms of government, by the recommendation of Congress. Each was a State from that day, though some formed no State constitutions until months, and, in some cases, years, had elapsed. Massachusetts remained under her colonial charter till 1780, Connecticut till 1818, and Rhode Island till 1842.

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[1] Frothingham's Rise of the Republic, p. 561.

In the latter part of 1775 Congress had recommended to New Hampshire, South Carolina, and Virginia, to modify their local governments, to "continue during the dispute with Great Britain." And in May, 1776, a like recommendation was made to "the several colonies where no governments sufficient to the exigencies of their affairs had been established." In accordance with these recommendations New Hampshire, South Carolina, Virginia, and New Jersey—all being royal colonies — provided themselves with governments adapted to their necessities. But, in at least three of these four cases, the governments were expressly declared to be temporary, to continue until the unhappy differences between Great Britain and America should be settled.

Of the body that framed the constitution of Virginia in 1776, Mr. Jefferson says: "They received in their creation no powers but what were given to every legislature before or since. They could not, therefore, pass an act transcendent to the powers of other legislatures." And of the instrument itself he says: "It pretends to no higher authority than the other ordinances of the same session." Such instruments could hardly be called *constitutions.*

Including the four already mentioned, the thirteen local governments were modified, or established, as follows:

New Hampshire,	January 5, 1776.
South Carolina,	March 26, 1776.
Virginia,	June 29, 1776.
New Jersey,	July 2, 1776.

Delaware,	September 20, 1776.
Pennsylvania,	September 28, 1776.
Maryland,	November 8, 1776.
North Carolina,	December 18, 1776.
Georgia,	February 5, 1777.
New York,	April 20, 1777.
Massachusetts,	March 2, 1780.
Connecticut,	September 16, 1818.
Rhode Island,	November 23, 1842.

Most of the States have altered their constitutions, some of them a number of times. Connecticut and Rhode Island had no other constitutions than their colonial charters till 1818 and 1842; and the constitutions then adopted still remain. Massachusetts, which formed her first constitution in 1780, adopted a new one in 1820, which is still in force.

The State constitutions resemble each other in their general provisions, while they differ in particulars. THE CONSTITUTION OF ILLINOIS, adopted in 1870, may be taken as fairly illustrating the general principles of these instruments. It contains fourteen articles, as follows:

I. Boundaries of the State.
II. Bill of Rights.
III. Distribution of Powers.
IV. Legislative Department.
V. Executive Department.
VI. Judicial Department.
VII. Suffrage.
VIII. Education.
IX. Revenue.
X. Counties.
XI. Corporations.
XII. Militia.
XIII. Warehouses.
XIV. Amendments to the Constitution.

The *Bill of Rights* contains twenty sections, relating to liberty of conscience, trial by jury, etc.

The *Powers* are three — the Legislative, the Executive, and the Judicial.

The *Legislative* power is vested in a General Assembly, consisting of a Senate and House of Representatives, both to be elected by the people.

The State is to be divided every ten years into fifty-one senatorial districts, in each of which a Senator is to be elected for four years. Half of the Senators go out every two years. Three Representatives are elected from each senatorial district, to serve two years. The election is on the Tuesday next after the first Monday in November of the even years. (This is the day for the election of members of Congress throughout the United States, commencing with 1876. The presidential election will come also on the same day.)

A *Senator* must be twenty-five years of age, and a Representative twenty-one; and each must have been a citizen of the United States five years, and a resident of the district two years.

The *Representatives* are elected on the principle of "minority representation." "Each qualified voter may cast as many votes for one candidate as there are Representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit." The legislature holds annual sessions.

A majority is a quorum in each House. The yeas and nays must be called on the request of five members in the House, and two in the Senate. The vote on the final passage of every bill must be by yeas and nays. No bill can become a law without the votes of a majority of the members elected to each House. No act can contain more than one subject, which must be expressed in its title. No law takes effect till the first of July after its passage, unless the legislature, by a vote of two-thirds of all the members elected, direct otherwise. Special legislation is forbidden in enumerated cases, and in all others where general laws are applicable. The General Assembly can not authorize lotteries, or gift enterprises; and the sale of such tickets must be prohibited by law.

The *Executive Department* consists of a Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, and Attorney-General. These hold office for four years, except the Treasurer, who holds for two years, and is ineligible for two years next after the end of his term. The Governor and Lieutenant-Governor must be thirty years of age. The Governor may grant pardons after conviction. He may veto bills, but the veto may be overcome by the votes of two-thirds of the members elected to each House. The Executive officers are elected at the same time with the Legislative.

The *Judicial* powers are vested in one Supreme Court, Circuit Courts, County Courts, Justices of the Peace, Police Magistrates, and such Courts as may be created by law for cities and towns. The Supreme Court consists of seven Judges, elected from seven districts, for nine years. Four make a quorum, and the concurrence of four is necessary for every decision. They choose one of their number Chief Justice. A Judge of this Court must be thirty years of age. There is one Circuit Judge in each judicial circuit, which must contain a population of not less than 100,000. The Circuit Judge must be twenty-five years of age, and is elected for six years. Both Supreme and Circuit Judges are elected on the first Monday of June. The County Judge is elected for four years, and a State's Attorney in each county for the same time. Counties with 50,000 inhabitants may have Probate Courts. Any Judge may be removed from office by the votes of three-fourths of the members elected to each House. All Judges of courts of record below the Supreme Court make written reports to the Supreme

Judges each year of such defects and omissions in the laws as their experience may suggest; and the Judges of the Supreme Court make report to the Governor, annually, of any defects and omissions in the constitution and laws, with appropriate forms of bills to cure such defects in the laws. The salaries of the Judges of the Supreme and Circuit Courts, and those of the Executive officers named in the constitution, and the pay of the members of the Legislature, can not be increased or diminished during their term of office.

The right of *Suffrage* belongs to every male citizen of the United States, of the age of twenty-one years, having resided one year in the State, ninety days in the County, and thirty days in the election district. All votes must be by ballot.

The constitution encourages *Education* by requiring the General Assembly to provide an efficient system of free schools. Public schools must not be sectarian, and public property must not be granted for sectarian purposes. County Superintendents are authorized.

The article on *Revenue* provides that all persons and corporations shall pay taxes in proportion to the value of their property; but peddlers, auctioneers, etc., may be taxed as the General Assembly may direct by general law. Property used exclusively for agricultural and horticultural societies, for school, religious, cemetery, and charitable purposes, may be exempted from taxation. No municipal indebtedness may be incurred exceeding five per centum on the value of the taxable property.

The *County* Officers are a Judge, Sheriff, County Clerk, Clerk of the Circuit Court (who may be *ex-officio* Recorder of deeds), Treasurer, Surveyor, and Coroner, who hold office for four years, except the Treasurer, Sheriff, and Coroner, who hold for two years. The General Assembly shall provide by general law for township organization, under which any county may organize by a majority vote; in this case the fiscal affairs of the county may be transacted as the General Assembly shall direct. Other counties will be managed by a "Board of County Commissioners," consisting of three officers, elected for three years.

Corporations can be created only by general laws. In elections for directors of incorporated companies, cumulative voting is allowed. The State can not own stock in any banking company. No act of the General Assembly creating corporations with banking powers shall go into effect till approved by a majority of the electors. If a banking law be enacted, bills must be secured by deposit, to the full amount thereof, of stocks of the United States or Illinois, to be rated at ten per cent below their par value. Railroad corporations must keep open to public inspection their books of transfer of stocks, and the directors must make annual reports, under oath, of their doings, including whatever may be prescribed by law. No railroad corporation shall consolidate its property with another owning a parallel or competing line; and no consolidation shall take place without public notice, of at least sixty days, to all stockholders. Railways are declared public highways, and reasonable maximum charges shall be established by law. Stock dividends and other fictitious increase of capital stock are void.

Article twelfth relates to the *Militia*, and article thirteenth to *Warehouses*.

Amendments to the constitution may be made by a constitutional convention, or be proposed by the legislature. If two-thirds of the members of each House vote to call a convention, the question shall be submitted to the people; and any amendments made by a convention thus called shall be submitted to the electors for approval. The legislature, by a vote of two-thirds of the members elected to each House, may propose amendments, which shall be voted on by the people; but amendments to more than one article can not be proposed at the same session of the legislature, nor to the same article oftener than once in four years.

Besides the fourteen articles there are three *separate sections.* The first forbids the legislature from ever releasing the Illinois Central Railroad from its obligations to the State. The second provides that there shall be no municipal subscriptions to railroads or private corporations. The third provides that the Illinois and Michigan Canal shall never be sold or leased without a vote of the electors, and that the General Assembly shall never loan the credit of the State, or make appropriations from the treasury thereof, in aid of railroads or canals.

The State governments resemble each other and the general government in having the three divisions, Executive, Legislative, and Judicial. They differ in many particulars, as the power of the Executive, the right of suffrage, the mode of election, the term of office, etc.

In Maine, New Hampshire, and Massachusetts, there is an Executive *Council*—ranging from five to eight in number—with whom the Governor advises as to appointments, pardons, etc.

In each of the New England States, the *Governor* is elected annually. In New York, Ohio, Wisconsin, Iowa, Minnesota, and Kansas, the term is two years; in New Jersey it is three; and in Pennsylvania, Delaware, Maryland, Illinois, California, and Oregon, it is four. In some States the Governor has the veto power.

In most of the States the *Secretary of State*, *Treasurer*, *Auditor*, *Attorney-General*, etc., are elected by the people. In Maine, these officers are all chosen by the legislature. In New Hampshire, the Governor appoints the Attorney-General; and the Treasurer and Secretary of State are chosen by the legislature. In New Jersey, the Governor and Senate appoint the Secretary of State, and the legislature choose the Treasurer. In Maryland, the Secretary of State is appointed by the Governor, the Comptroller is elected by the people, and the legislature choose the Treasurer.

In all the New England States the *Senators and Representatives* are elected annually. In Ohio, Michigan, etc., they are elected for two years. In New York, the Senators are for two years, and the Representatives for one. In New Jersey, the Senators are chosen for three years; the Representatives, for one. In Pennsylvania, Delaware, Maryland, Indiana, and Illinois, the Senators are for four years, and the Representatives for two. The ratio of the number of Senators to that of Representatives is usually about as one to three; though in Massachusetts, it is as one to six; in Vermont, as one to eight; and in New Hampshire, as one to twenty-five. In most of the States the two Houses are called the General Assembly, but in Massachusetts and New Hampshire they are called the General Court. In New York, the lower House is called The Assembly; and in Virginia and West Virginia, The House of Delegates.

In Maine, the *Judges* of the Supreme Court are appointed by the Governor and Council, for seven years. In New Hampshire and Massachusetts, they are appointed in the same way, and hold office during good behavior. In Vermont, the legislature elect the Judges annually. In Connecticut, the legislature elect the Judges for eight years. In New Jersey, the Supreme Judges are appointed by the Governor and Senate for seven years, and the Circuit Judges for six. In Delaware, the Governor appoints all the Judges, and they hold office during good behavior. The Supreme Judges are elected by the people, in Ohio, for five years; in Wisconsin, Iowa, Kansas, and Oregon, for six; in Indiana and Minnesota, for seven; in Michigan, for eight; in Illinois, for nine; in Maryland and California, for ten; in Pennsylvania, for twenty-one.

By the new constitution of Pennsylvania the Governor and Supreme Judges can not be re-elected.

In a number of States *suffrage* was formerly limited to "white" persons, but the Fifteenth Amendment to the Constitution renders this limitation inoperative. Twenty-five States require the voter to be a citizen of the United States; the remaining twelve make the legal declaration of intention to become a citizen sufficient. A residence of one year in the State is generally required, though a number make six months sufficient; and Kentucky requires two years. Georgia, Nevada, Massachusetts, and New Hampshire, make the payment of taxes a requisite for voting, except in certain cases. The same is the case in Delaware, for those over twenty-two years of age. In Connecticut, those can not vote who are "unable to read an article in the constitution or any section of the statutes of the State;" and in Massachusetts, those "unable to read the constitution in the English language, and write their names, unless prevented by physical debility, or over sixty years of age when the constitution was adopted." Fifteen States exclude from suffrage those who are *insane;* ten, those who are *idiotic;* seven, those who are "*non compos mentis*," or "*of unsound mind;*" eight, those under guardianship; seven, those who are *paupers;* one, those supported in an *alms-house or asylum.*

These particulars give a general idea of the sphere of the State governments, and show in what respects their constitutions differ. It will be seen that, ordinarily, the citizen has a more direct and personal relation to the laws of the State than to those of the nation. For many years prior to the recent war we were conscious of our relation to the nation chiefly by our Congressional and Presidential elections. Taxes were paid to the State officials; and the laws which regulated the daily life of the people came from the State legislatures and not from Congress. But during the war the nation became to every man a distinct reality.

In general, the State governments have to do with matters that are local and municipal, in distinction from those which are general and national. The well-being of the people is, of course, dependent upon both governments, though State legislation bears more directly than national upon their prosperity and happiness. There are some matters, controlled by the States, in regard to which uniformity is desirable; as, for example, the descent of property. It is unfortunate that a will, made and executed according to the forms of law in one State, should subsequently be found to be invalid because the death of the testator had occurred in another State, to which he had removed.

The American people, thus, constitute one nation with whom is the sovereignty; but they have a government which is two-fold—exists in two departments. To each of these departments the nation has committed certain governmental trusts. It might have distributed these trusts differently; given more to the one and less to the other. The nation may alter the distribution when it pleases; for, strictly, the sovereignty does not belong to the government of a nation, but to the nation itself, which has established the government. The people are undoubtedly competent to change the character of the government, and give it such form as they may think will most promote their interests. But as the people of the United States are also the people of the States severally, we may rest satisfied that no change will ever be made which the people of the States do not believe will be for their common good.

THE DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such a government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operations till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the dangers of invasions from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for the naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burned our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind — enemies in war; in peace, friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, *Free* and *Independent States;* that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as *Free* and *Independent States*, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which *Independent States* may of right do. And for the support of this Declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

NEW HAMPSHIRE.—Josiah Bartlett, William Whipple, Matthew Thornton.

MASSACHUSETTS BAY.—Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry.

RHODE ISLAND, ETC.—Stephen Hopkins, William Ellery.

CONNECTICUT.—Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott.

NEW YORK.—William Floyd, Philip Livingston, Francis Lewis, Lewis Morris.

NEW JERSEY.—Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark.

PENNSYLVANIA.—Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross.

DELAWARE.—Cæsar Rodney, George Read, Thomas M'Kean.

MARYLAND.—Samuel Chase, William Paca, Thomas Stone, Charles Carroll, of Carrollton.

VIRGINIA.—George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jr., Francis Lightfoot Lee, Carter Braxton.

NORTH CAROLINA.—William Hooper, Joseph Hewes, John Penn.

SOUTH CAROLINA.—Edward Rutledge, Thomas Heyward, Jr., Thomas Lynch, Jr., Arthur Middleton.

GEORGIA.—Button Gwinnett, Lyman Hall, George Walton.

ARTICLES OF CONFEDERATION.

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I.—The style of this confederacy shall be, "The United States of America."

ART. II.—Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

ART. III.—The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. IV.—The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction, shall be laid by any State on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given, in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V.—For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years, in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in any meeting of the States and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on, Congress, except for treason, felony or breach of the peace.

ART. VI.—No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties, entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace, by any State, except such number only as shall be deemed necessary, by the United States, in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up, by any State, in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII.—When land forces are raised by any State, for the common defense, all officers of, or under the rank of colonel, shall be appointed by the legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII.—All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

Art. IX.—The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States, shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they can not agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated, "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them, in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip, as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

Art. X.—The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States, in the Congress of the United States assembled is requisite.

Art. XI.—Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Art. XII.—All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the

United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII.—Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

ORDINANCE OF 1787.

JULY 13, 1787.

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES, NORTH-WEST OF THE RIVER OHIO.

Be it ordained, by the United States, in Congress assembled, that the said Territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained, by the authority aforesaid, that the estates, both of resident and non-resident proprietors in the said Territory, dying intestate, shall descend to, and be distributed among, their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild, to take the share of their deceased parent, in equal parts, among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have, in equal parts, among them, their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said Territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be (being of full age), and attested by three witnesses, and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to descent and conveyance of property.

Be it ordained, by the authority aforesaid, that there shall be appointed from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the secretary of Congress. There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress, from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards, the legislature shall have authority to alter them as they shall think fit.

The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers. All general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made, shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; *provided*, that for every five hundred free male inhabitants there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; *provided*, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; *provided*, *also*, that a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years, and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office for five years, unless sooner removed by Congress, any three of whom to be a quorum, and the members of the council shall be nominated and appointed in the following manner, to-wit: as soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed.

And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office — the governor before the president of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority, by joint ballot to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said Territory; to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest.

It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original States and the people and States in the said

Territory, and forever remain unalterable, unless by common consent, to-wit:

Article I.—No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said Territory.

Art. II.—The inhabitants of the said Territory shall always be entitled to the benefit of the writ of *habeas corpus*, and of trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law; all persons shall be bailable unless for capital offenses, where the proof shall be evident or the presumption great; all fines shall be moderate, and no cruel or unusual punishments shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said Territory, that shall in any manner whatever, interfere with, or affect private contracts or engagements, *bona fide* and without fraud previously formed.

Art. III.—Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Art. IV.—The said Territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alteration therein, as shall be constitutionally made; and to all the acts and ordinances of the United States, in Congress assembled, conformable thereto. The inhabitants and settlers in the said Territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them, by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States, in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States, in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said Territory, as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. V.—There shall be formed in the said Territory not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to-wit: The western State in the said Territory, shall be bounded by the Mississippi, the Ohio, and the Wabash rivers; a direct line drawn, from the Wabash and Post Vincents due north to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line; *provided*, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said Territory which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan: and whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatsoever; and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. VI.—There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *Provided*, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained, by the authority aforesaid, that the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.—SECTION 1.

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro-tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4.

1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time, publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States: if he approve he shall sign it, but if not he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large in their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect shall be

approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post-offices and post-roads;

8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of

the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and,

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECTION 9.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any im-

posts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.—Section 1.

1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint in such manner as the legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

Clause 3 *has been superseded by the* 12*th Article of Amendments; for text see page* 166.

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not

receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION 2.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the Courts of law, or in the heads of Departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

He shall from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4.

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III—SECTION 1.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction. both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

ARTICLE IV—Section 1.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4.

The United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the Executive (when the legislature can not be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing Amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: provided, that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath, or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches, and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

1. The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice

shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

1. Neither Slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President. or hold any office, civil or

military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

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